

City of Warwick, RI Code of Ordinances

APPENDIX A - SUBDIVISION AND LAND DEVELOPMENT REGULATIONS

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ARTICLE I. AUTHORITY AND PURPOSE

Section 1.01 Authority.

In accordance with the authority vested in the Warwick Planning Board by G.L. 1956, § 45-23-1 et seq., as amended, and by Article VIII, Section 8-12 of the Charter of the City of Warwick, the Planning Board hereby declares its intention to exercise the power granted to it and hereby adopts the following regulations. They are declared effective as of June 1, 2024, and supersede all previous subdivision and development review regulations.

Section 1.02 Purpose.

The purpose of these regulations is to establish the procedural and substantive provisions for the subdivision and development of land in order to ensure the orderly growth of the City of Warwick and to:

1. Protect the public health, safety and welfare;
2. Provide for the orderly, thorough and expeditious review and approval of land developments and subdivisions;
3. Promote high quality and appropriate design and construction of land developments and subdivisions;
4. Protect the existing natural and built environment and to mitigate the significant negative impacts of any proposed development on the existing environment;
5. Promote design of land developments and subdivisions which are well-integrated with the surrounding neighborhoods with regard to natural and built features, and which concentrate development in areas which can best support intensive use by reason of natural characteristics and existing infrastructure;
6. Provide thorough technical review of all proposed land developments and subdivisions;
7. Provide local design and improvement standards to reflect the intent of the comprehensive plan with regard to the physical character of the various neighborhoods and districts of the City of Warwick;
8. Encourage, fairly apply and administer dedications of public land, impact mitigation and payment in lieu thereof based on clear documentation and of needs;
9. Establish consistent application of procedures for local recordkeeping on all matters of land development and subdivision review, approval, and construction.
10. Enhance the nature of the natural environment through the development process wherever possible;
11. Encourage development consistent with the policies, goals and objectives of the city's comprehensive plan, particularly with regard to the protection of interconnected networks of open space and greenway systems;
12. Encourage the ecological enhancement and restoration of existing site conditions on land proposed for development.

Section 1.03 Consistency with comprehensive plan.

In the instance of uncertainty in the construction or application of any section of these regulations, these regulations shall be construed in a manner that will further the implementation of, and not be contrary to, the goals, policies and applicable elements of the comprehensive plan of the city, as may be amended from time to time. These regulations shall be construed in a manner consistent with the Rhode Island Land Development and Subdivision Review Enabling Act of 1992, as amended.

Section 1.04 Relationship to zoning ordinance.

The requirements of the zoning ordinance of the City of Warwick, as amended from time to time, shall be considered to be the applicable standards for all subdivisions and developments governed by these subdivision and land development regulations.

Section 1.05 Relationship to other federal, state and local land use regulations.

These regulations are intended to be consistent with and not supersede any federal, state or other local land use regulations.

Section 1.06 Applicability.

- (a) These subdivision and development regulations shall be applicable in all of the following instances:
1. In all cases of subdivision of land, including re-subdivision, as defined in Article 2.0 of these subdivision and land development regulations, all provisions of these regulations shall apply.
 2. In all cases of land development projects as provided for in G.L. 1956, § 45-24-47 of the Zoning Enabling Act of 1991.
 3. In all cases of development plan review as provided for in G.L. 1956, § 45-24-49 of the Zoning Enabling Act of 1991.
- (b) Plats required:
1. All activity defined as subdivision shall require a new plat, drawn to the specifications of these subdivision and land development regulations, and shall be reviewed and approved by the Planning Board or its agents as provided herein; and
 2. Prior to recording, the approved plat shall be submitted for signature and recording as specified in RIGL § 45-23-64.

Article II. DEFINITIONS

Administrative officer. The director of the Warwick Planning Department, deputy director, and principal planner.

Aggrieved Party. An aggrieved party, for purposes of these Regulations, shall be:

- a. Any person or persons or entity or entities who can demonstrate that their property will be injured by a decision of any Officer or agency responsible for administering the Subdivision and Land Development Regulations of the of the City of Warwick; or
- b. Anyone requiring notice pursuant to these Regulations.

Agricultural land. Land suitable for agriculture by reason of suitability of soil or other natural characteristics or past use for agricultural purposes. Agricultural land includes that defined as prime farm land or additional farm land of statewide importance for the state by the Natural Resources Conservation Service (formerly Soil Conservation Service) of the United States Department of Agriculture.

Applicant. Person or entity who applies for subdivision or development plan approval either as an owner or authorized agent of the owner.

Board. See "Planning Board"

Board of appeal. The local review authority for appeals of actions of the administrative officer shall be the local zoning board of review constituted as the board of appeals.

Bond. See "Improvement guarantee."

Buildable lot. A lot where construction for the use(s) permitted on the site under the zoning ordinance is considered practicable by the Planning Board, considering the physical constraints to development of the site as well as the requirements of the pertinent federal, state and local regulations.

Building envelope. The three-dimensional space within which a structure is permitted to be built on a lot and which is defined by regulations governing building setbacks, maximum height, and bulk; by other regulations; and/or any combination thereof.

Building setback line. A line delineating the minimum allowable distance between a street line or a lot line and a principal or accessory building or structure; generally parallel with and measured from the street line or lot line at a minimum distance therefrom equal to the required yard depth.

Certificate of completeness. A notice issued by the administrative officer informing an applicant that the application is complete and meets the requirements of the city's regulations, and that the applicant may proceed with the review process.

City. The City of Warwick, Rhode Island.

Comprehensive Plan. The Comprehensive Plan adopted by the city and approved pursuant to Chapter 22.2-5 – “Rhode Island Comprehensive Planning and Land Use Regulation Act” of the General Laws of the State of Rhode Island (1956 as amended) and to which any zoning, subdivision, and/or land use regulation adopted pursuant to said Chapter shall be in compliance.

Concept plan. A drawing with accompanying information showing the basic elements of a proposed land development plan or subdivision as used for pre-application meetings and early discussions, and classification of the project within the approval process.

Consistency with the comprehensive plan. A requirement of all local land use regulations which means that all such regulations and subsequent actions shall be in accordance with the public policies arrived at through detailed study and analysis and adopted by the municipality as the comprehensive community plan.

Conventional subdivision. A subdivision in which all lots meet the minimum requirements of the appropriate zoning district and all land being subdivided is dedicated to either development lots or street right of way, with no common open space.

Cul-de-sac. See "street, cul-de-sac."

Days. Calendar days.

Dedication, fee-in-lieu-of. Payments of cash which are authorized when requirements for mandatory dedication of land are not met because of physical conditions of the site or other reasons.

Development. The construction, reconstruction, conversion, structural alteration, relocation, and/or enlargement of any structure; any mining, excavation, landfill or land disturbance; any change in use or alteration or extension of the use, of land.

Development plan review. Design or site plan review of a development of a permitted use. The City may utilize development plan review, at the discretion of the Administrative Officer, under limited circumstances to encourage development to comply with the following design and/or performance standards of the City, including but not limited to:

- (i) A change in use at the property where no extensive construction of improvement is sought;
- (ii) An adaptive reuse project located in a commercial zone where no extensive exterior construction of improvements is sought;
- (iii) An adaptive reuse project located in a residential zone which results in less than nine (9) residential units;
- (iv) Development in a designated urban or growth center such as City Centre;
- (v) Institutional development design review for educational or hospital facilities;
- (vi) Development in a historic district ;

- (vii) An adaptive reuse project that maintains, and does not degrade, the level of service from a vehicular traffic and circulation perspective at any point of ingress or egress.

Development regulation. Zoning, subdivision, land development plan, development plan review, historic district, official map, floodplain regulation, soil erosion control or any other governmental regulation of the use and development of land.

Division of land. A subdivision.

Easement. The right of a party to use all or part of the property of another for a specific purpose.

Endorsement. The signature of the Planning Board chairperson or administrative officer on an approved plat or plan, permitting recording of the plat or plan.

Environmental constraints. Natural features, resources, or land characteristics that are sensitive to change and may require conservation measures or the application of special development techniques to prevent degradation of the site, or may require limited development, or in certain instances, may preclude development. See also "physical constraints to development."

Final plan. The final stage of land development and/or subdivision review.

Final plat. The final drawing(s) of all or a portion of a subdivision to be recorded in the city's land evidence records after approval by the Planning Board and any accompanying material in accordance with the provisions herein and/or required by the Planning Board.

Frontage. The portion of a lot abutting a street as measured along the street line between lot lines.

Improvement. Any natural or built item which becomes part of, is placed upon, or is affixed to real estate.

Improvement guarantee. A security instrument accepted by the governing body upon the recommendation of the city engineer and the Planning Board to ensure that all improvements, facilities, or work required by the land development and subdivision regulations, or required by the city as a condition of approval, will be completed in compliance with the approved plans and specifications of a development.

Land-development project. A project in which one or more lots, tracts, or parcels of land or a portion thereof are developed or redeveloped as a coordinated site for one or more uses, units, or structures, including but not limited to, planned development or cluster development for residential commercial, institutional, recreational, open space, or mixed uses.

- (i) *Minor land development project.* A land development project involving any one the following:

- (A) Seven thousand five hundred (7,500) gross square feet of floor area of new commercial, manufacturing or industrial development; or less, or

(B) An expansion of up to fifty percent (50%) of existing floor area or up to ten thousand (10,000) square feet for commercial, manufacturing or industrial structures; or

(C) Mixed-use development consisting of up to six (6) dwelling units and two thousand five hundred (2,500) gross square feet of commercial space or less; or

(D) Multi-family residential or residential condominium development of nine (9) units or less; or

(E) Change in use at the property where no extensive construction of improvements are sought;

(F) An adaptive reuse project of up to twenty-five thousand (25,000) square feet of gross floor area located in a commercial zone where no extensive exterior construction of improvements is sought;

(G) An adaptive reuse project located in a residential zone which results in less than nine (9) residential units;

The process by which minor land development projects are reviewed by the local planning board or administrative officer is set forth in § 45-23-38, *Minor land development or minor subdivision review*.

(ii) *Major land development project*. A land development project which exceeds the thresholds for a minor land development project as set forth in this section. Notwithstanding administrative review allowance within the Intermodal Zone District, the process by which major land development projects are reviewed by the local planning board is set forth in § 10 45-23-39, *Major land development or major subdivision review*.

Land suitable for development. The total land area, less land unsuitable for development.

Land unsuitable for development. Land having natural or man-made limitations which make it unsuitable for development.

Local regulations. The land development and subdivision review regulations adopted under the provisions of the Rhode Island Land Development and Subdivision Review Enabling Act of 1992, as amended.

Lot not for Development. A parcel of land recorded in the Land Evidence Records that is created or reserved for open space and conservation and has or will be deeded to the City of Warwick, or the Rhode Island Department of Environmental Management, with appropriate deed and plat restrictions forbidding any development thereon, in accordance with State Laws.

Maintenance guarantee. Any security instrument which may be required and accepted by the city to ensure that necessary improvements will function as required for a specific period of time. See "improvement guarantee."

Major land development project. A land development project in which the total floor area for a commercial or industrial use is at least 100,000 square feet, mixed use development is at least 200,000 square feet.

Master plan. An overall plan for a proposed project site outlining general, rather than detailed, development intentions. It describes the basic parameters of a major development proposal, rather than giving full engineering details. Required in major land development or major subdivision review only. It is the first formal review step of the major land development or major subdivision process and the step in the process in which the public hearing is held regarding RIGL 45-23-39.

Minor land development project. A land development project in which the total floor area for a commercial or industrial use is at least 50,000 square feet but less than 100,000 square feet or a mixed use development at least 100,000 square feet but less than 200,000 square feet.

Modification of requirements. See Article 8.0, waivers and modifications.

Open space. Any parcel or area of land or water set aside, dedicated, designated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring such open space; provided that the area may be improved with only those structures and other improvements that are designated to be incidental to the natural openness of the land. Open space provided by a cluster development or other land development project for public or common use, shall either be conveyed to the City and accepted by it for park, open space, agricultural, or other specified use or uses, or be conveyed to a nonprofit organization, the principal purpose of which is the conservation of open space, or be conveyed to a corporation or trust owned or to be owned by the owners of lots or units within the development, or owners of shares within a cooperative development. If such a corporation or trust is used, ownership shall pass with conveyances of the lots or units. In any case where the land is not conveyed to the City, a restriction enforceable by the City shall be recorded providing that the land shall be kept in the authorized condition(s) and not be built upon or developed for accessory uses such as parking or roadway.

Parcel. A lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development. Also referred to as a tract.

Permitting authority. The local agency of government, meaning any board, commission or administrative officer specifically empowered by state enabling law and local regulation or ordinance to hear and decide on specific matters pertaining to local land use.

Phased development. Development, usually for large-scale projects, where construction of public and/or private improvements proceeds by section(s) subsequent to approval of a master plan for the entire site.

Physical constraints to development. Characteristics of a site or area, either natural or manmade, which present significant difficulties to construction of the uses permitted on that site, or would require extraordinary construction methods. See also "environmental constraints."

Planning board. The City of Warwick Planning Board.

Plat. A drawing or drawings of a land development or subdivision plan showing the location, boundaries, and lot lines of individual properties, as well as other necessary information as specified in the local regulations.

Pre-application conference. An initial meeting between developers and the Planning Board or the Planning Department which affords developers the opportunity to present their proposals informally and to receive comments and directions from city officials and others.

Preliminary plan. A required stage of land development and subdivision review which generally requires detailed engineered drawings and the applicant to first obtain all required state and federal permits.

Public hearing. A hearing before the planning board which is duly noticed in accordance with § 45-23-42 and which allows public comment. A public hearing is not required for an application or stage of approval unless otherwise stated in this chapter.

Public improvement. Any street or other roadway, sidewalk, pedestrian way, tree, lawn, off-street parking area, drainage feature, or other facility for which the city or other governmental entity either is presently responsible, or will ultimately assume the responsibility for maintenance and operation upon municipal acceptance.

Residential development. Development consisting entirely of single-family or multiple-family dwelling units. A dwelling unit is a structure or portion thereof providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation and containing a separate means of ingress and egress.

Re-subdivision. Any change of an approved or recorded subdivision plat or in a lot recorded in the Land Evidence Records, or that affects the lot lines of any areas reserved for public use, or that affects any map or plan legally recorded prior to the adoption of these Rules and Regulations.

Soil Survey of Rhode Island. The maps and accompanying text of the soil survey conducted by the U.S. Department of Agriculture, Soil Conservation Service, for the state, including any amendments thereto.

Stormwater detention. A provision for storage of stormwater runoff and the controlled release of such runoff during and after a flood or storm.

Stormwater retention. A provision for storage of stormwater runoff.

Street. A public or private thoroughfare used, or intended to be used, for passage or travel by motor vehicles. Streets are further classified by the functions they perform. See "street classification."

Street, access to. An adequate and permanent way of entering a lot. All lots of record shall have access to a public street for all vehicles normally associated with the uses permitted for that lot.

Street, alley. A public or private thoroughfare primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

Street classification. A method of roadway organization which identifies a street hierarchy according to function within a road system, that is, types of vehicles served and anticipated volumes, for the purposes of promoting safety, efficient land use and the design character of neighborhoods and districts. Local classifications shall use the following as major categories:

Arterial. A major street that serves as an avenue for the circulation of traffic into, out of, or around the municipality and carries high volumes of traffic.

Collector. A street whose principal function is to carry traffic between local streets and arterial streets but that may also provide direct access to abutting properties.

Local. A street whose primary function is to provide access to abutting properties.

Street, cul-de-sac. A local street with only one outlet and having an appropriate vehicular turnaround, either temporary or permanent, at the closed end.

Street, private. A thoroughfare established as a separate tract for the benefit of multiple, adjacent properties and meeting specific, municipal improvement standards. This definition shall not apply to driveways.

Street, public. All public property reserved or dedicated for street traffic.

Street, stub. A portion of a street reserved to provide access to future development, which may provide for utility connections.

Structure. A combination of materials to form a construction for use, occupancy, or ornamentation, whether installed on, above, or below, the surface of land or water.

Subdivider. Any person who: Having an interest in land, causes it, directly or indirectly, to be divided into a subdivision; or Directly or indirectly sells, leases, or develops, or offers to sell, lease, or develop, or advertises to sell, lease, or develop, any interest, lot, parcel, site, unit, or plat in a subdivision; or Engages directly or through an agent in the business of selling, leasing, developing, or offering for sale, lease, or development a subdivision or any interest, lot, parcel, site, unit, or plat in a subdivision.

Subdivision. The division of a lot, tract or parcel of land into two or more lots, tracts, or parcels or any adjustment to existing lot lines is considered a subdivision.

(i) Administrative subdivision. Subdivision of existing lots which yields no additional lots for development, and involves no creation or extension of streets. This subdivision only involves division, mergers, mergers and division, or adjustments of boundaries of existing lots. The process by which an administrative officer or municipal planning board or commission reviews any subdivision qualifying for this review is set forth in RIGL § 45-23-37.

(ii) Minor subdivision. A subdivision creating nine (9) or fewer buildable lots. The process by which a municipal planning board, and/or administrative officer reviews a minor subdivision is set forth in RIGL § 45-23-38.

(iii) Major subdivision. A subdivision creating ten (10) or more buildable lots. The process by which a municipal planning board reviews any subdivision qualifying for this review under RIGL § 45-23-39.

Temporary improvement. Improvements built and maintained by a developer during construction of a development project and prior to release of the improvement guarantee, but not intended to be permanent.

Unit. A part of the property intended for any type of independent use including one or more rooms or spaces located in one or more floors or parts of floors in a building.

Vested rights. The right to initiate or continue the development of an approved project for a specified period of time, under the regulations that were in effect at the time of approval, even if, after the approval, the regulations change prior to the completion of the project.

Waiver of requirements. See Article 8.0, waivers and modifications.

Yield plan. A plan of a conventional subdivision or land development project that depicts the maximum number of building lots or dwelling units that could reasonably be built on a parcel of land under current zoning, taking into account physical constraints to development, such as wetlands, steep slopes, etc. and not including land unsuitable for development towards the minimum lot area required in the appropriate zoning district.

Article III. GENERAL PROVISIONS

Section 3.01 General requirements.

- (a) All subdivisions submitted to the city for approval shall be subject to the requirements contained herein unless otherwise specifically provided. In the instances where approval of any subdivision or land development by the Planning Board is required, the Board, prior to granting approval, shall make positive findings on all of the applicable standards listed below, as part of the record. If a negative finding for any of these standards is made, the Planning Board shall have grounds for denial of the project design. These standards are:
- (i) Each subdivision shall be consistent with the requirements of the city comprehensive plan and/or shall satisfactorily address the issues where there may be inconsistencies.
 - (ii) Each lot in the subdivision shall conform to the standards and provisions of the city zoning ordinance.
 - (iii) Lots not being created for the purpose of present or future development need not meet the area and other dimensional requirements of the zoning ordinance provided that:
 - 1) A notation is shown on the recorded plat that the lot being created is not a buildable lot;
 - 2) and a conservation or preservation restriction pursuant to G.L. 1956, § 34-39-1 et seq., as amended, is granted to the City of Warwick prohibiting any such present or future development.
 - (iv) There will be no significant negative environmental impacts from the proposed development as shown on the final plan, with all required conditions for approval.
 - (v) The subdivision, as proposed, will not result in the creation of individual lots with such physical constraints to development that building on those lots according to pertinent regulations and building standards would be impractical. Lots with such physical constraints to development may be created only if identified as permanent open space or permanently reserved for a public purpose on the approved, recorded plans.
 - (vi) All proposed land developments and all subdivision lots shall have adequate and permanent physical access to a public street. Lot frontage on a public street without physical access shall not be considered in compliance with this requirement.
 - (vii) Each subdivision shall provide for safe circulation of pedestrian and vehicular traffic; for adequate surface water runoff; for suitable building sites; and for the preservation of natural, historical, or cultural features that contribute to the attractiveness of the community.
- (b) Except for administrative subdivisions, findings of fact must be supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted.

Article IV. SPECIAL PROVISIONS

Section 4.01 Phasing of projects.

When phasing of a project is required, the following provisions are applicable:

- (a) Approval of the entire site design first as a master plan. Thereafter, the development plans may be submitted for preliminary and/or final review and/or approval by phases.
- (b) In such review and approval of phased development, the Planning Board may, in its discretion, impose conditions for determining the physical limits of phases, completion schedules, and guarantees for allowing progression to additional phases, for allowing two or more phases to proceed in review or construction simultaneously, for interim public improvements or construction conditions, for changes to master or preliminary plans, and may include other provisions as necessitated by local conditions.
- (c) The master plan documents shall contain information on the physical limits of the phases, the schedule and sequence of public improvement installation, improvement guarantees, and the work and completion schedules for approvals and construction of the phases.
- (d) The master plan for a phased development shall remain vested as long as it can be proved, to the satisfaction of the Planning Board, that work is proceeding on either the approval stages or on the construction of the development as shown in the approved master plan documents. Vesting shall extend to all information shown on the approved master plan documents.

Section 4.02 Unified Development Review.

- (a) This section is provided in accordance with RIGL 45-24-46.4.
- (b) Review of projects submitted herein shall follow the procedures, timelines, and standards of RIGL 45-23-36 in addition to the following:
 - (i) **Minor subdivisions and land-development projects.** Except for dimensional relief granted by modification as set forth in RIGL 45-23-38, requests for variances and/or for the issuance of special-use permits related to minor subdivisions and land-development projects shall be submitted as part of the application materials for the preliminary plan stage of review or if combined, for the first stage of reviews. A public hearing on the application, including any variance and special-use permit requests that meets the requirements of subsection (c) of this section shall be held prior to consideration of the preliminary plan by the planning board or commission. The planning board or commission shall conditionally approve or deny the request(s) for the variance(s) and/or special-use permit(s) before considering the preliminary plan application for the minor subdivision or land development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the minor subdivision or land-development project.
 - (ii) **Development plan review.** Except for dimensional relief granted by modification as set forth in RIGL 45-23-38, requests for relief from the literal requirements of the zoning

ordinance and/or for the issuance of special-use permits related to minor subdivisions and land-development projects shall be submitted as part of the application materials for the preliminary plan stage of review. A public hearing on the application, including any variance and special-use permit requests that meets the requirements of subsection (c) of this section shall be held prior to consideration of the preliminary plan by the planning board or commission relevant permitting authority. The planning board or commission authorized permitting authority shall conditionally approve or deny the request(s) for the variance(s) and/or special-use permit(s) before considering the preliminary plan application for the minor subdivision or land-development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the minor subdivision or land-development project.

- (iii) **Major subdivisions and land-development projects — Master plan.** Except for dimensional relief granted by modification as set forth in RIGL 45-23-39, requests for variances for relief from the literal requirements of the zoning ordinance and/or for the issuance of a special-use permit related to major subdivisions and land-development projects shall be submitted as part of the application materials for the master plan stage of review, or if combined, the first stage of review. A public hearing on the application, including any variance and special-use permit requests that meets the requirements of subsection (c) of this section, shall be held prior to consideration of the master plan by the planning board or commission. The planning board or commission shall conditionally approve or deny the requests for the variance(s) and/or special-use permit(s) before considering the master plan application for the major subdivision or land-development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the major subdivision or land-development project.
- (iv) **Major subdivisions and land-development projects — Preliminary plan.** During the preliminary plan stage of review, applicants shall have the ability to request alteration of any variance(s) and/or special-use permit(s) granted by the planning board or commission during the master plan stage of review, and/or to request new variance(s) and/or special-use permit(s), based on the outcomes of the more detailed planning and design necessary for the preliminary plan. If necessary, the applicant shall submit such requests and all supporting documentation along with the preliminary plan application materials. If the applicant requests new or additional zoning relief at this stage a public hearing on the application, that meets the requirements of subsection (c) of this section, shall be held prior to consideration of the preliminary plan by the planning board or commission. The planning board or commission shall conditionally approve, amend, or deny the requests for alteration(s), new variance(s) and/or new special-use permit(s), before considering the preliminary plan application for the major subdivision or land-development project.

Approval of the alteration(s), new variance(s), and/or new special-use permit(s) shall be conditioned on approval of the final plan of the major subdivision or land-development project. If the planning board or commission denies the request for alteration(s), new variance(s), and/or new special-use permit(s), the planning board shall have the option of remanding the application back to the master plan stage of review. Alternatively, if the planning board or commission denies the request for alteration(s), new variance(s), and/or new special-use permit(s), the applicant may consent to an extension of the decision period mandated by RIGL 45-23-12 41(f) so that additional information can be provided and reviewed by the board or commission.

- (c) **Decision.** The time periods by which the planning board must approve or deny applications for variances and special-use permits under the unified development review provisions of the local regulations shall be the same as the time periods by which the board must make a decision on the applicable review stage of the category of project under review.
- (d) Unless otherwise provided in this chapter all under this section shall require a single public hearing, held pursuant to subsection (b) of this section. The public hearing must meet the following requirements:
 - (i) Public hearing notice shall adhere to the requirements found in RIGL 45-23-42(b).
 - (ii) The notice area for notice of the public hearing shall be two hundred feet (200') of the perimeter of the area included in the subdivision and/or land-development project. Notice of the public hearing shall be sent by the administrative officer to the administrative officer of an adjacent municipality if:
 - 1) The notice area extends into the adjacent municipality; or
 - 2) The development site extends into the adjacent municipality; or
 - 3) There is a potential for significant negative impact on the adjacent municipality. Additional notice within watersheds shall also be sent as required in RIGL 45-23-53(b) and (c).
 - (iii) Public notice shall indicate that dimensional variance(s), use variance(s) and/or special-use permit(s) are to be considered for the subdivision and/or land-development project.
 - (iv) The cost of all public notice is to be borne by the applicant.
- (e) The time periods by which the permitting authority must approve, approve with conditions or deny requests for variances and special-use permits under the unified development review provisions of a zoning ordinance shall be the same as the time periods by which the board must make a decision on the applicable review stage of the underlying type of project under review.

- (f) The expirations period of an approval of a variance or special use permit granted under this section shall be the same as those set forth in the statute for the underlying type of project under review.
- (g) Decisions under this section, including requests for the variance(s) and/or special-use permits that are denied by the permitting authority may be appealed pursuant to RIGL 45-23-71.

Article V. REVIEW AND APPROVAL OF PLATS AND PLANS

Section 5.01 General requirements.

- (a) The Planning Board may consider minor or major land developments, and minor or major subdivisions for approval according to the procedures set forth in this section unless otherwise specifically provided. The Planning Board shall act as the review body for Unified Development Review Applications.
- (b) The administrative officer shall advise the applicant as to which approvals are required and the appropriate board or commission for hearing an application for land development or subdivision project.
- (c) An applicant for subdivision approval who wishes the Planning Board to take some official action on his or her application shall submit all of the materials required by the applicable checklist in Article 13.0 of these regulations to the administrative officer. If the requested action is not applicable under such regulations, the applicant shall submit a written request to the administrative officer describing the requested action. The matter will be placed on the next available agenda of the Planning Board only if the administrative officer determines that all of the required material has been submitted and only after a certificate of completeness has been issued in accordance with these regulations.
- (d) Any submission of materials to the administrative officer shall be accompanied by a cover letter or letter of transmittal indicating the date, the materials being submitted and the requested action. No materials shall be accepted by the administrative officer without said cover letter. Upon receipt of any materials, the administrative officer shall record the date of receipt upon them.
- (e) If an application for subdivision approval is made by someone other than the owner of the land being subdivided, the application shall be signed by both the applicant and all landowner(s).
- (f) To make application for subdivision and land development, the applicant shall submit to the administrative officer the following materials:
 - (i) A completed and signed application form;
 - (ii) The application checklist indicating that all required information is shown on the plans, or indicating where said information is either not applicable or has been waived by the Planning Board or the administrative officer;
 - (iii) The required number of completed plans;
 - (iv) Administrative and project review fees (if required). See Article 11, Section 11.03.

- (g) The submission of significantly revised plans at the sole initiative of the applicant, such that the plans require additional review by city staff, shall require a new application, completed checklist, the required number of plans, and the full application fee.

Section 5.02 Authority and application for development and certification of a completeness

Authority. The City shall provide for the submission and approval of land development projects and subdivisions, as such terms are defined in the Rhode Island Zoning Enabling Act of 1991, and/or this chapter, and such are subject to the local regulations which shall be consistent with the requirements of applicable state law(s). The local regulations must include all requirements, procedures and standards necessary for proper review and approval of applications made under these regulations to ensure consistency with the intent and purposes of applicable state law(s) and with § 45-24-47 of the Rhode Island Zoning Enabling Act of 1991.

- (a) An application shall be complete for purposes of commencing the applicable time period for action when so certified by the administrative officer. Certification of a complete application shall be made in writing by the administrative officer upon a form entitled "certificate of completeness." a copy of said certificate shall be provided to the applicant. In the event such certification of the application is not made within the time specified in these regulations for the type of plan being proposed, the application shall be deemed complete for purposes of commencing the review period unless the application lacks information required for such applications as specified in Article 13.0, and the administrative officer has notified the applicant, in writing, of the deficiencies in the application.
- (b) The Planning Board may subsequently require the applicant to correct any information found to be in error and/or submit additional information specified in the regulations but not required by the administrative officer prior to certification, as is necessary to make an informed decision.
- (c) Where review is postponed with the consent of the applicant, pending further information or revision of information, the time period for review shall be stayed and shall resume when the administrative officer or Planning Board determines that the required application information is complete.
- (d) For the purposes of calculating mandatory review periods as provided in these regulations, all days shall be considered to be calendar days.
- (e) Application types and review stages:
 - (i) **Applications requesting relief from the zoning ordinance.**

- 1) Applications under this section which require relief which qualifies only as a modification under § 45-24-46 and local ordinances shall proceed by filing an application under this chapter and a request for a modification to the zoning enforcement officer. If such modification is granted the application shall then proceed to be reviewed by the administrative officer pursuant to the applicable requirements of this section. If the modification is denied or an objection is received as set forth in § 45-24-46, such application shall proceed under unified development plan review pursuant to § 45-23-50.1.
- 2) Applications under this section which require relief from the literal provisions of the zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning board under unified development plan review pursuant to § 45-23-50.1, and a request for review shall accompany the preliminary plan application.
- 3) Any application involving a street creation or extension shall be reviewed by the planning board and require a public hearing.

(ii) Other applications.

- 1) The administrative officer shall review and grant, grant with conditions or deny all other applications under this section and may grant waivers of design standards as set forth in the local regulations and zoning ordinance. The local regulations shall specifically list what limited waivers an administrative officer is authorized to grant as part of their review.
- 2) Review stages.
 - a) Minor plan review consists of two (2) stages, preliminary and final; provided, that unless otherwise set forth in this section, if a street creation or extension is involved, or a request for variances and/or special-use permits are submitted, pursuant to the regulation's unified development review provisions, a public hearing is required before the planning board. The administrative officer may combine the approval stages, providing requirements for both stages are met by the applicant to the satisfaction of the administrative officer.

Section 5.03 Procedure for approval.

Applications for subdivision approval shall be considered in accordance with the following procedures:

(a) Staff Conference

- i. The applicant shall meet with the staff of the Planning Department to discuss the proposed project staff conference, the applicant and the planning staff shall determine if a pre-application meeting with the planning com required by these regulations or is desired by either the applicant or the city.
- ii. The applicant shall then submit all the information required by the pre-application checklist in Article 13.0. The administrative officer shall review and comment on the checklist information, and if determined to be complete, shall issue a certificate of completeness and schedule the applicant to appear before the Planning Board.

If no pre-application conference is required or requested, the administrative officer will advise the applicant as to which category of approval is required for a project. An applicant shall not be required to obtain both alnd development and development plan review, for the same project. The following categories of applications may be filed:

Subdivisions. Administrative subdivision, minor subdivision or major subdivision.

Land development projects. Minor land development project or major land development; and

Development plan review.

(b) Pre-application conference and concept review

Pre-application conferences are intended for the guidance of the applicant and shall not be considered approval of a project or of any of its elements. The pre-application conference shall aim to encourage information sharing and discussion of project concepts among the participants, including what form of land development may be appropriate to meet the goals and policies of the comprehensive plan with regard to preserving the character of the land, natural resources, and the provision of community services.

At the pre-application stage, the applicant shall submit a concept plan as described in Article 2, and the Planning Board or administrative officer shall provide an informal concept plan review for the proposed development.

(c) Administrative subdivision

Any applicant requesting approval of a proposed administrative subdivision, as defined herein, shall submit to the administrative officer the items required by the checklist for administrative subdivisions in Article 13.0.

The application shall be certified as complete or incomplete by the administrative officer within 15 days from the date of submission according to the provision of Section 5.02 of this article.

Within 15 days of certification of completeness, the administrative officer shall review the application and approve, deny or refer it to the Planning Board with recommendations. The

officer shall report the action to the Planning Board at its next regular meeting, to be made part of the record.

If no action is taken by the administrative officer within the 15 days, the application shall be placed on the agenda of the next regular Planning Board meeting.

If referred to the Planning Board, the Board shall consider the application and the recommendations of the administrative officer and shall either approve, approve with conditions, or deny the application within 65 days of certification of completeness. Failure of the Planning Board to act within the period prescribed shall constitute approval of the administrative subdivision plan and a certificate of the administrative officer as to the failure of the Planning Board or committee to act within the required time, and the resulting approval shall be issued on request of the applicant.

Denial of an application by the administrative officer shall not be appealable and shall require the plan to be submitted as a minor subdivision application.

Any approval of an administrative subdivision shall be evidenced by a written decision, which shall be filed and posted in the office of the city clerk.

Approval of an administrative subdivision shall expire 90 days from the date of approval unless within such period a plat in conformity with such approval is submitted for signature and recording as specified in Article 6.0.

(d) **Minor land development and minor subdivision.**

(i) *Submission requirements.*

Any applicant requesting approval of a proposed minor subdivision or minor land development, as defined in this article, shall submit to the administrative officer the items required by the pre-application checklist as provided in Article 13.0. Pre-application review shall follow the procedure specified in Section 5.03(b). Following the pre-application meeting(s) the applicant shall submit the information required in the preliminary plat checklist for minor land developments and minor subdivisions.

(ii) *Certification of preliminary plat.*

For each applicable stage of review, the application shall be certified complete or incomplete by the administrative officer within 25 days of submission so long as a completed checklist of the requirements for submission are provided as part of the submission. If no street creation or extension is required, and/or unified development review is not requested, and a completed checklist of the requirements for submission are provided as part of the submission, such application shall be certified, in writing, complete or incomplete by the administrative officer within fifteen (15) days according to the provisions of section 5.02 of this article. The running of the time period set forth in this article will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a

corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.

(iii) *Decision.*

On a preliminary plan, if no street extension or creation is required, the Planning Board or administrative officer shall approve, deny, or approve with conditions the preliminary plan within 65 days of the issuance of the certificate of completeness by the administrative officer as provided in Section 5.02 of this article, above.

If a street extension or creation is required, or the application is reviewed under the unified development plan review, the Planning Board shall hold a public hearing prior to approval according to the requirements in [section 5.3.5.s.](#) of this article. The Planning Board shall approve, deny, or approve with conditions the preliminary plan within 95 days of the issuance of the certificate of completeness by the administrative officer as provided in [subsection 5.2.c.](#) of this article.

Failure to act. Failure of the Planning Board to act within the period prescribed shall constitute approval of the preliminary plan and a certificate of the administrative officer as to the failure of the Planning Board to act within the required time, and the resulting approval shall be issued on request of the applicant.

Re-assignment to major review. The planning board may re-assign a proposed minor project to major review only when the planning board is unable to make positive findings required in [RIGL 45-23-60.](#)

Final plan. Final plans shall be reviewed and approved by either the administrative officer or technical review committee. The administrative officer or committee shall report its actions to the Planning Board at its next regular meeting to be made part of the record. The administrative officer or technical review committee shall approve, deny, approve with conditions, or refer the application to the planning board based upon a finding that there is a major change within twenty-five (25) days of the certificate of completeness.

(iv) *Modifications and changes to plans.*

Minor changes, as defined in the local regulations, to the plans approved at any stage may be approved administratively, by the administrative officer. The changes may be authorized without additional public hearings, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting recommendation from either the technical review committee or the permitting authority. Denial of the proposed change(s) shall be referred to the applicable permitting authority for review as a major change.

Major changes, as defined in the local regulations, to the plans approved at any stage may be approved only by the applicable permitting authority and must follow the same review and hearing process required for approval of preliminary plans, which shall include a public hearing if originally required as part of the application.

The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines the change to be a major change.

(v) Appeal.

Decisions under this section shall be considered an appealable decision pursuant RIGL 45-23-71.

(vi) Expiration of approvals.

Approvals of a minor land development or subdivision plan shall expire one year from the date of approval unless with [within] such period a plat or plan, in conformity with such approval, and as defined in Article 2.0, is submitted for signature and recording as specified in Article 6.0. Validity may be extended for a longer period for cause shown, if requested by the applicant in writing, and approved by the Planning Board.

(e) Major land development and major subdivision.

(i) Stages of Review

Major land development and major subdivisions review consists of three stages of review, master plan, preliminary plan and final plan, following the preapplication meetings(s). Also required is a public hearing at the master plan stage of review or, if combined at the first stage of review.

The administrative officer may combine review stages but only the planning board may waive the requirements specified in RIGL 45-23-62. Review stages may be combined only after the administrative officer determines that all necessary requirements have been met by the applicant or the planning board has waived any submission requirements not included by the applicant.

(ii) Master plan review submission requirements.

- a) The applicant shall first submit to the administrative officer the items required by the local regulations for master plans.
- b) Requirements for the master plan and supporting material for this phase of review include, but are not limited to: information on the natural and built features of the surrounding neighborhood, existing natural and man-made conditions of the development site, including topographic features, the freshwater wetland and coastal zone boundaries, the floodplains, as well as the proposed design concept, proposed public improvements and dedications, tentative construction phasing; and potential neighborhood impacts.

- c) Initial comments will be solicited from:
- 1) Local agencies including, but not limited to, the planning department, the department of public works, fire and police departments, the conservation and recreation commissions;
 - 2) Adjacent communities;
 - 3) State agencies, as appropriate, including the departments of environmental management and transportation and the coastal resources management council; and
 - 4) Federal agencies, as appropriate. The administrative officer shall coordinate review and comments by local officials, adjacent communities, and state and federal agencies.

d) Applications requesting relief from the zoning ordinance.

- 1) Applications under this chapter which require relief which qualifies only as a modification under RIGL 45-24-46 and local ordinances shall proceed by filing a master plan application under this section and a request for a modification to the zoning enforcement officer. If such modification is granted, the application shall then proceed to be reviewed by the planning board pursuant to the applicable requirements of this section. If the modification is denied or an objection is received as set forth in RIGL 45-24-46, such application shall proceed under unified development plan review pursuant to RIGL 45-23-50.1.
- 2) Applications under this section which require relief from the literal provisions of the zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning board under unified development plan review pursuant to RIGL 45-23-50.1.

Certification. The application must be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days of the submission, according to the provisions of RIGL 45-23-36(b), so long as a completed checklist of requirements are provided with the submission. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.

Public hearing.

- a) A public hearing will be held prior to the planning board decision on the master plan. If the master plan and preliminary plan review stages are being combined, a public hearing shall be held during the combined stage of review.
- b) Notice for the public hearing is required and must be given at least fourteen (14) days prior to the date of the meeting in a newspaper of local circulation within the municipality. Notice must be mailed to the applicant and to all property owners within the notice area, as specified by local regulations.
- c) At the public hearing, the applicant will present the proposed development project. The planning board must allow oral and written comments from the general public. All public comments are to be made part of the public record of the project application.

Decision. The planning board shall, within ninety (90) days of certification of completeness, or within a further amount of time that may be consented to by the applicant through the submission of a written waiver, approve of the master plan as submitted, approve with changes and/or conditions, or deny the application, according to the requirements of RIGL's 45-23-60 and 45-26 23-63.

Failure to act. Failure of the planning board to act within the prescribed period constitutes approval of the master plan, and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval will be issued on request of the applicant.

Vesting. The approved master plan is vested for a period of two (2) years, with the right to extend for two (2), one-year extensions upon written request by the applicant, who must appear before the planning board for the annual review. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested by the applicant, in writing, and approved by the planning board. Master plan vesting includes the zoning requirements, conceptual layout, and all conditions shown on the approved master plan drawings and supporting materials. The initial four (4) year vesting for the approved master plan constitutes the vested rights for the development as required in RIGL 45-24-44.

(iii) Preliminary plan review submission requirements.

- a. The applicant shall first submit to the administrative officer the items required by the local regulations for preliminary plans.

- b. Requirements for the preliminary plan and supporting materials for this phase of the review include, but are not limited to: engineering plans depicting the existing site conditions, engineering plans depicting the proposed development project, and a perimeter survey.

At the preliminary plan review phase, the administrative officer shall solicit final, written comments and/or approvals of the department of public works, the city or town engineer, the city or town solicitor, other local government departments, commissions, or authorities as appropriate.

- a. Prior to approval of the preliminary plan, copies of all legal documents describing the property, proposed easements, and rights-of-way.
- b. Prior to approval of the preliminary plan, an applicant must submit all permits required by state or federal agencies, including permits related to freshwater wetlands, the coastal zone, floodplains, preliminary suitability for individual septic disposal systems, public water systems, and connections to state roads. For a state permit from the Rhode Island department of transportation, a letter evidencing the issuance of such a permit upon the submission of a bond and insurance is sufficient, but such actual permit shall be required prior to the issuance of a building permit.
- c. If the applicant is requesting alteration of any variances and/or special-use permits granted by the planning board or commission at the master plan stage of review pursuant to adopted unified development review provisions, and/or any new variances and/or special-use permits, such requests and all supporting documentation shall be included as part of the preliminary plan application materials, pursuant to **RIGL 45-23-50.1(b)**.

Certification. The application will be certified as complete or incomplete by the administrative officer within twenty-five (25) days, according to the provisions of **RIGL 45-23-36(b)** so long as a completed checklist of requirements are provided with the submission. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event shall the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.

Public notice. Prior to the first planning board meeting on the preliminary plan, public notice shall be sent to abutters only at least fourteen (14) days before the hearing.

Public improvement guarantees. Proposed arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees, shall be reviewed and approved by the planning board at preliminary plan approval.

Decision. A complete application for a major subdivision or development plan shall be approved, approved with conditions, or denied, in accordance with the requirements of RIGL's 45-23-15 60 and 45-23-63, within ninety (90) days of the date when it is certified complete, or within a further amount of time that may be consented to by the developer through the submission of a written waiver. Provided that, the timeframe for decision is automatically extended if evidence of state permits has not been provided, or otherwise waived in accordance with this section.

Failure to act. Failure of the planning board to act within the prescribed period constitutes approval of the preliminary plan and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval shall be issued on request of the applicant.

Vesting. The approved preliminary plan is vested for a period of two (2) years with the right to extend for two (2), one-year extensions upon written request by the applicant, who must appear before the planning board for each annual review and provide proof of valid state or federal permits as applicable. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the planning board. The vesting for the preliminary plan approval includes all general and specific conditions shown on the approved preliminary plan drawings and supporting material.

(iv) Final plan, submission requirements.

- a) The applicant shall submit to the administrative officer the items required by the local regulations for the final plan, as well as all material required by the planning board when the application was given preliminary approval.
- b) Arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees.
- c) Certification by the tax collector that all property taxes are current.
- d) For phased projects, the final plan for phases following the first phase, shall be accompanied by copies of as-built drawings not previously submitted of all existing public improvements for prior phases.

Certification. The application for final plan approval shall be certified complete or incomplete by the administrative officer in writing, within fifteen (15) days, according to the provisions of **RIGL 45-23-36(b)** so long as a completed checklist of requirements are provided with the submission. This time period may be extended to twenty-five (25) days by written notice from the administrative officer to the applicant where the final plans contain changes to or elements not included in the preliminary plan approval. The running of the time period set forth herein shall be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and shall recommence upon the resubmission of a corrected application by the applicant. However, in no event shall the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as complete and does not require submission to the planning board as per subsection (c) of this section, the final plan shall be considered approved.

Decision. The administrative officer, or, if referred to it, the planning board, shall review, grant, grant with conditions or deny final plan approval. A decision shall be issued within forty-five (45) days after the certification of completeness, or within a further amount of time that may be consented to by the applicant, approve or deny the final plan as submitted.

a) *Failure to act.* Failure of the planning board to act within the prescribed period constitutes approval of the final plan and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval shall be issued on request of the applicant.

b) *Expiration of approval.* The final approval of a major subdivision or land development project expires one year from the date of approval with the right to extend for one year upon written request by the applicant, who must appear before the planning board for the annual review, unless, within that period, the plat or plan has been submitted for signature and recording as specified in RIGL 31 45-23-64. Thereafter, the planning board may, for good cause shown, extend the period for recording.

Acceptance of public improvements. Signature and recording as specified in **RIGL 45-23-34** constitute the acceptance by the municipality of any street or other public improvement or other land intended for dedication. Final plan approval shall not impose any duty upon the municipality to maintain or improve those dedicated areas until the governing body of the municipality accepts the completed public improvements as constructed in compliance with the final plans.

Validity of recorded plans. The approved final plan, once recorded, remains valid as the approved plan for the site unless and until an amendment to the plan is approved under the procedure stated in **RIGL 45-23-65**, or a new plan is approved by the planning board.

Modifications and changes to plans.

- a) Minor changes, as defined in the local regulations, to the plans approved at any stage may be approved administratively, by the administrative officer. The changes may be authorized without an additional planning board meeting, to the extent applicable, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting recommendation from either the technical review committee or the permitting authority. Denial of the proposed change(s) shall be referred to the applicable permitting authority for review as a major change.
- b) Major changes, as defined in the local regulations, to the plans approved at any stage may be approved only by the applicable permitting authority and must include a public hearing.
- c) The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines the change to be a major change of the approved plans.

Appeal. Decisions under this section shall be considered an appealable decision 22 pursuant to **§ 45-23-71**.

a) *Public hearing and notice requirements.*

1. A public hearing shall be required for a major land development project or a major subdivision or where a street extension or creation requires a public hearing for a minor land development project or minor subdivision.
2. Public notice of the hearing shall be given at least 14 days prior to the date of the hearing in a newspaper of local circulation within the city. Newspaper ads shall be printed in the legal section of the classifieds using a type size at least as large as the normal type size used by the newspaper in its news articles.
3. Written notice shall be paid for and mailed by the applicant, upon forms to be provided to the applicant by the city, to each owner of property within the notice areas as specified in **section 5.3.5.t** of this article. The applicant shall receive a copy of the notice from the Planning Department. Notice shall be mailed by certified mail, return receipt requested, not less than 10 days prior to the date of the hearing. As

proof of such mailing, a copy of all return receipts shall be provided to the Planning Department by the applicant prior to or at the time of the public hearing.

4. All mail and newspaper notices required by this subsection shall contain the following information:
 - i. The date, time, and place of the public hearing;
 - ii. The assessor's plat and lot number(s) of the subject property;
 - iii. The street address of the subject property, or if no street address is available, the name of the street(s) on which or near which the subject property is located and the distance and direction from the nearest existing street intersection in tenths of a mile;
 - iv. Advise interested parties where and when a copy of the plans of the proposed major subdivision or major land development project may be examined; and
 - v. Contain a statement that the proposed major subdivision or major land development project may be revised by Board as a result of further study or because of the views expressed at the public hearing.

b) Notice area.

1. The distance for notice of the public hearing shall be 200 feet from the perimeter of the parcel being subdivided in all zoning districts. The applicant is responsible for determining the correct names and addresses of all property owners required to be notified using current names and addresses listed by the tax assessor. For parcels within the notice area held in common ownership, such as open space owned by a condominium or home owners association, notice shall be sent to all persons that share in the common ownership.
2. Additional mail notice for areas which fall within watersheds shall also be sent as required in G.L. § 45-23-53(B) and (C).
3. Notice of the public hearing shall be sent by the administrative officer to the administrative officer of an adjacent municipality if:
 - i. The notice area extends into the adjacent municipality; or
 - ii. The development site extends into the adjacent municipality; or
 - iii. There is a potential for significant negative impact on the adjacent municipality.

(f) Development plan review.

Any applicant requesting approval of a development plan, as defined in the zoning ordinance, shall submit to the administrative officer the items required by the checklist for development plans in **article 18.0**. The administrative officer or Planning Board shall render a decision, which shall be evidenced by a written decision and shall be filed and posted in the office of the city clerk. Four copies of the final plan set shall be submitted by the applicant for signature by the administrative officer.

- a) The authorized permitting authority may waive requirements for development plan approval where there is a change in use or occupancy and no extensive construction of improvements is sought. The waiver may be granted only by a decision by the permitting authority finding that the use will not affect existing drainage, circulation, relationship of buildings to each other, landscaping, buffering, lighting and other considerations of development plan approval, and that the existing facilities do not require upgraded or additional site improvements. The application for a waiver of development plan approval review shall include documentation, as required by the permitting authority, on prior use of the site, the proposed use, and its impact.
- b) The authorized permitting authority may grant waivers of design standards as set forth in the local regulations and zoning ordinance. The local regulations shall specifically list what limited waivers an administrative officer is authorized to grant as part of their review.
- c) Review stages. Administrative development plan review consists of one stage of review, while formal development plan review consists of two (2) stages of review, preliminary and final. The administrative officer may combine the approval stages, providing requirements for both stages are met by the applicant to the satisfaction of the administrative officer.

Application requesting relief from the zoning ordinance.

- a) Applications under this chapter which require relief which qualifies only as a modification under RIGL 45-24-46 and local ordinances shall proceed by filing an application under this chapter and a request for a modification to the zoning enforcement officer. If such modification is granted the application shall then proceed to be reviewed by the administrative officer pursuant to the applicable requirements of this section. If the modification is denied or an objection is received as set forth in RIGL 45-24-46, such application shall proceed under unified development plan review pursuant to RIGL 45-23-50.1.
- b) Applications under this section which require relief from the literal provisions of the zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning board under unified development plan review pursuant to RIGL 45-23-50.1, and a request for review shall accompany the preliminary plan application.
- (c) Submission requirements. Any applicant requesting approval of a proposed development under this chapter, shall submit to the administrative officer the items required by the local regulations. Requests for relief from the literal requirements of the zoning ordinance and/or for the issuance of special-use permits or use variances related to projects qualifying for development plan review shall be submitted and reviewed under unified development review pursuant to RIGL 45-23-50.1.
- (d) Certification. The application shall be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days or within fifteen (15) days if no street creation or extension is required, and/or unified development review is not required, according to the provisions of RIGL 45-23-36(b). The running of the time period set forth in

this section will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(e) Timeframes for decision.

1. Administrative development plan approval. An application shall be approved, denied, or approved with conditions within twenty-five (25) days of the certificate of completeness or within any further time that is agreed to in writing by the applicant and administrative officer.

Formal development plan approval.

- (a) Preliminary plan. Unless the application is reviewed under unified development review, the permitting authority will approve, deny, or approve with conditions, the preliminary plan within sixty-five (65) days of certification of completeness, or within any further time that is agreed to by the applicant and the permitting authority.
- (b) Final Plan. For formal development plan approval, the permitting authority shall delegate final plan review and approval to the administrative officer. The officer will report its actions in writing to the permitting authority at its next regular meeting, to be made part of the record. Final plan shall be approved or denied within forty-five (45) days after the certification of completeness, or within a further amount of time that may be consented to by the applicant, in writing.
- (c) Failure to act. Failure of the administrative officer or the permitting authority to act within the period prescribed constitutes approval of the preliminary plan and a certificate of the administrative officer as to the failure to act within the required time and the resulting approval shall be issued on request of the application.
- (d) Vested rights. Approval of development plan review shall expire two (2) years from the date of approval unless, within that period, a plat or plan, in conformity with approval, and as defined in this act, is submitted for signature and recording as specified in RIGL 45-23-64. Validity may be extended for an additional period upon application to the administrative officer or permitting authority, whichever entity approved the application, upon a showing of good cause.

Modifications and changes to plans.

- (a) Minor changes, as defined in the local regulations, to the plans approved at any stage may be approved administratively, by the administrative officer, whereupon final plan approval may be issued. The changes may be authorized without an additional planning board meeting, at the discretion of the administrative officer. All changes shall be made part of the

permanent record of the project application. This provision does not prohibit the administrative officer from requesting recommendation from either the technical review committee or the permitting authority. Denial of the proposed change(s) shall be referred to the permitting authority for review as a major change.

- (b) Major changes, as defined in the local regulations, to the plans approved at any stage may be approved only by the permitting authority and must follow the same review and hearing process required for approval of preliminary plans, which shall include a public hearing.
- (c) The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines that there has been a major change to the approved plans.
- (d) Appeal. A decision under this section shall be considered an appealable decision pursuant to RIGL 45-23-71.

Article VI. RECORDING PLATS AND PLANS

Section 6.01 Endorsement of plats and plans.

- (a) All approved final plans and plats for land development and subdivision projects shall be endorsed (signed) by the appropriate Planning Board official, with the date of final approval. Plans and plats for major land developments and subdivisions and minor land developments and subdivisions shall be endorsed by the Planning Board chairperson or, in the absence of the chairperson, the Vice Chair of the Planning Board attesting to the approval by the Planning Board. All administrative subdivision plats and plans shall be endorsed and dated with the date of approval by the administrative officer.
- (b) Upon endorsement, all plans and plats shall be submitted to the administrative officer prior to recording and filing in the land evidence records of the city. The material to be recorded for all plans and plats shall include all pertinent plans with notes thereon concerning all the essential aspects of the approved project design, the implementation schedule, special conditions, placed on the development by the city, permits and agreements with state and federal reviewing agencies, and other information as required by the Planning Board. A formal written final plan decision letter, signed by the Planning Board chair or secretary for major land development projects and major subdivisions, or by the administrative officer for minor land development projects and minor subdivisions, to include all conditions of final approval, and referencing all approved plans and supporting material, shall also be recorded.
- (c) Other parts of the applications record for subdivisions and land development projects, including all meeting records, approved master plan and preliminary plans, site analyses, all legal agreements, records of the public hearing and the entire final approval set of drawings shall be kept permanently by the city departments responsible for implementation and enforcement. One copy shall be kept on file by the Planning Department.
- (d) No endorsement of plans and plats shall be made until:
- (e) The administrative officer has certified in writing that all of the required improvements have been made; or
- (f) The finance director has certified in writing that acceptable improvement guarantees have been received in accordance with the provisions of **article 7.0** of these regulations.
- (g) The administrative officer shall notify the statewide "911" emergency authority and the local police and fire authorities servicing the new plat with the information required by each of the authorities.
- (h) Digital parcel data. The final record plans of minor subdivisions that are computer generated with computer aided drafting (CAD), automated mapping, or GIS software, shall be submitted with copies of digital files on magnetic or optical media. The final record plans and as-built drawings of major subdivisions that are computer generated shall be submitted with copies of digital .dwg files on magnetic or optical media. Registration points for each .dwg layer shall be in the RISPCS NAD'1983. A minimum of four such points spaced near the extremities of the drawing or map defining the spatial extent of the plan or drawing is

required. The name and version number of the computer software used to generate the digital files shall be submitted.

Section 6.02 Changes to recorded plats and plans.

- (a) For all changes to the approved plans of land development projects or subdivisions subject to this appendix, an amendment of the final development plans shall be required prior to the issuance of any building permits for construction upon the subject property. Any changes approved in the final plan shall be recorded as amendments to the final plan in accordance with the procedure established for recording of plats and plans as provided in **section 6.1** of this article.
- (b) Minor changes to a land development or subdivision plan shall be approved administratively by the administrative officer, whereupon a permit may be issued. The administrative officer may, at his/her discretion, authorize such changes without review and approval of the Planning Board and without a public hearing thereon. All such changes shall be made a part of the permanent record of the project application. This provision shall not prohibit the administrative officer from requesting a recommendation from either the technical review committee or the Planning Board.
- (c) Denial of the proposed change(s) by the administrative officer shall be referred to the Planning Board for review as a major change according to the procedures provided in **section 6.2.(f)**, below.
- (d) Upon written authorization of the approval of a minor change by the administrative officer, the building official may issue a building permit for any proposed construction upon the subject property.
- (e) For the purposes of these regulations, the term "minor changes" shall mean any change which, in the opinion of the administrative officer, is consistent with the intent of the original approval. Such minor changes shall include, but are not necessarily limited to, the following:
 - (i) Amendments to the utility plans which are acceptable to the city engineer and the director of public works;
 - (ii) Lot line revisions which can be reviewed and approved as an administrative subdivision according to the provisions of **article 5.0**;
 - (iii) Amendments to grading plans or drainage plans which are acceptable to the city engineer and the director of public works and which do not require the approval of any state or federal reviewing authorities;
 - (iv) Amendments to construction plans which are required because of unforeseen physical conditions on the parcel being subdivided;
 - (v) Modifications to any construction plans for off-site improvements which are acceptable to the city engineer and the director of public works; or
 - (vi) Modifications which are required by outside permitting agencies such as, but not limited to, the Department of Environmental Management, the coastal resources management council, and the Department of Transportation.

- (f) Major changes to a land development or subdivision plan may be approved only by the Planning Board and shall follow the same review and public hearing process as required for preliminary approval to a major land development and major subdivision as provided in [article 5.0](#).
- (g) For the purpose of these regulations, the term "major changes" shall mean changes which, in the opinion of the administrative officer, are clearly contrary to the intent of the original approval. Such major changes shall include, but are not necessarily limited to, the following:
 - (i) Changes which would have the effect of creating additional lots or dwelling units for development;
 - (ii) Changes which would be contrary to any applicable provision of the zoning ordinance or which require a variance or special use permit from the zoning board of review; or
 - (iii) Changes which may have significant adverse impacts on abutting property or property in the vicinity of the proposed subdivision or land development project.

Section 6.03 Rescission procedure.

- (a) The Planning Board, only upon application by all landowners of the plat to be affected, may determine that the application for plat recession is not consistent with the comprehensive community plan and is not in compliance with the standards and provisions of the city's zoning ordinance and/or land development and subdivision review regulations and shall hold a public hearing in accordance with the provisions of [article 5.0, section 5.3.5s](#).
- (b) The Planning Board shall approve, approve with conditions or modifications, or deny the application for rescission of the plat in accordance with the requirements of [article 11.0, section 11.6](#).
- (c) If it is necessary to abandon any street covered under [G.L. § 24-6-1 et seq.](#), the Planning Board shall submit to the city council the documents necessary for the abandonment process.
- (d) Once the required process for rescission or for rescission and abandonment has been completed, the revised plat shall be signed and recorded as specified by [article 6.0, section 6.1](#) of these regulations.

Article VII. GUARANTEES OF IMPROVEMENTS

Section 7.01 Purpose.

Improvement guarantees shall be provided to ensure the timely and proper installation and completion of the required street, utility and other physical improvements, including any approved improvements to any resulting open space, and to ensure compliance with other nonstructural conditions of final plat approval.

Section 7.02 Procedures.

- (a) Planning Board approval of agreements for the completion of all required improvements shall be required prior to final plan approval. Such agreements may, at the option of the Planning Board, be in the form of:
 - (i) Completion of actual construction of all improvements;
 - (ii) Improvement guarantees, or
 - (iii) A combination thereof.
- (b) Where improvements are constructed without a financial guarantee, the work is to be completed prior to final approval and recording. All construction shall be inspected and approved under the direction of the administrative officer in accordance with these regulations. Inspections shall be made by the Department of Public Works at all required stages during construction, and written inspection reports shall be prepared by the inspector(s) and maintained by public works. All inspection reports shall be submitted to the administrative officer. In addition, "as built" drawings of the site which have been certified by a state licensed surveyor or engineer and which show that all the improvements, including any grading of the site, are in accordance with the approved construction plans shall be submitted to the engineering division for review and approval. The site design engineer must certify that, in his opinion, based on a reasonable degree of engineering certainty, all of the improvements, including grading, have been constructed in substantial compliance with approved construction plans.
- (c) Where improvements are proposed to be constructed without a financial guarantee, and the Planning Board has approved that proposal, the appropriate city official shall certify in writing that all information required by the appropriate checklist in Article 13 has been submitted, and that the applicant may proceed with construction of the proposed development as shown on the final plans. This certification shall include the statement that the final plat shall not be recorded until all required improvements have been completed, and that the provisions of Article 9, Section 9.01 entitled Violations will apply. This letter shall constitute conditional final approval and shall be recorded in the land evidence records of the city. The date of recording shall constitute the commencement of the appeal period provided in Article 12, Section 12.01.
- (d) Upon completion of all required improvements constructed without a financial guarantee, the administrative officer shall certify in writing of such completion, and a copy of the certification shall be provided to the subdivider upon request. The final plat shall be

endorsed by the Planning Board or the administrative officer and the plat shall be recorded as provided by these regulations, at which time the lots within the subdivision may be transferred or sold. The applicant shall be required to post a bond in the amount of ten percent of the construction estimate prior to the acceptance of all required improvements by the city. Such bond shall be held by the city for a period of one year, to be released upon the written request of the applicant, and following final inspection and acceptance of the required improvements by the city.

- (e) If improvements are to be guaranteed, guarantees shall be in an amount and with all necessary conditions to secure for the city the actual construction and complete installation of all the required improvements, within the period specified by the Planning Board. The amount shall be based on actual cost estimates for all required public improvements.
- (f) The recommended amount of the improvement guarantee shall be submitted in writing by the city engineer to the Planning Board for approval.
- (g) Acceptable funds may include a cashier's check, cash, letter of credit, or other funds which the administrative officer determines will be readily available to the city if the improvements are not completed within two years of approval of the final plat. Negotiable funds will be kept in a savings account under the supervision of the finance director.
- (h) The amount of the improvement guarantee approved by the Planning Board shall be submitted by the city clerk to the city council for approval.
- (i) The applicant may apply to the Planning Department requesting from the Board a partial release of the improvement guarantee upon completion of a portion of the required improvements. The city engineer will notify the Board in writing as to the amount of reduction recommended, if any, based upon the completion of improvements according to required specifications. Such application shall include "as built" drawings of the site which have been certified by a state licensed surveyor or engineer and which show that all improvements, including any grading of the site, are in accordance with the approved plans. The site design engineer must certify that, in his opinion, based upon a reasonable degree of engineering certainty, all of the improvements, including grading, have been constructed in substantial compliance with approved plans. The application will not be acted on until the submitted "as built" drawings have been approved by the engineering division.
- (j) Upon completion of all required improvements, the applicant may apply to the Planning Department requesting from the Board the release of 90 percent of the improvement guarantee originally posted.
- (k) One year following the date of completion of all of the required improvements as provisionally certified by the city engineer, the applicant may, by writing the Planning Department, request the Board to release the remaining improvement guarantee. The city engineer will notify the Board in writing as to whether defects in the design or construction of the required improvements have become evident since the release of 90 percent of the original improvement guarantee.

- (l) Where no improvement guarantee is required, a certified copy of the vote of the Board stating that no improvement guarantee is required shall be filed with the recorded plat.
- (m) Required improvements shall be completed within two years of the final approval of the subdivision by the Board. If additional time is required, the subdivider shall, by writing to the Planning Department, request from the Board such additional time as necessary. Any such extension request shall be accompanied by an improvement guarantee review, update, and posting of additional improvement guarantee, if so determined by the Board. If the improvements are not completed within two years or the time extension arranged with the Board, the improvement guarantee will be forfeited to the city. Upon forfeiture, the Board shall authorize the director of public works to use the forfeited performance guarantee to complete or cause to be completed as many of the required improvements as the improvement guarantee will cover.
- (n) Where a development or subdivision is approved and constructed in phases, the Planning Board shall specify improvement guarantee requirements related to each particular phase.
- (o) All public improvements, open space, streets, land, easements or other facilities, once inspected by the city engineer, approved by the director of public works, certified by the administrative officer and approved by the Board, shall be conveyed by the subdivider with a written request to the administrative officer. The request by the subdivider shall contain a description of all facilities to be accepted and shall be accompanied by an accurate description of all streets, easements, land or other facilities by metes and bounds and by reference to the final plat drawing(s) and by a warranty deed transferring ownership to the city and describing any special conditions or other requirements. Said improvements as conveyed to the city shall be accepted by the appropriate municipal agency for maintenance and/or as part of the municipal system.
- (p) Private facilities, such as private roads, open space and privately maintained drainage systems, wastewater, and water systems and/or facilities shall not be conveyed to the city.
- (q) The city has the authority to enforce the guarantees by all appropriate legal and equitable remedies, including but not limited to those as granted by G.L. § 45-23-46(I).

Article VIII. WAIVERS AND MODIFICATIONS

Section 8.01 Modification or waiver of requirements.

- (a) The Planning Board shall have the power to grant such modifications or waivers from the requirements for land development and subdivision approval as may be reasonable and within the general purposes and intents of these regulations. The only grounds for such waivers or modifications shall be where the literal enforcement of one or more of the provisions of the regulations is impractical and will exact undue hardship because of peculiar conditions pertaining to the land in question or where such waiver or modification is in the best interest of good planning practice or design as evidenced by consistency with the comprehensive plan and the zoning ordinance.

Section 8.02 Waiver of development plan approval.

- a) The Planning Board may waive requirements for development plan approval where there is a change in use or occupancy and no extensive construction of improvements is sought. The waiver shall be granted only by a decision of the Board that finds that the use will not affect existing drainage, circulation, relationship of buildings to each other, landscaping, buffering, lighting and other considerations of development plan approval, and that the existing facilities do not require upgraded or additional site improvements.
- b) The application for a waiver of development plan approval review shall include such documentation as required by the Board on prior use of the site, the proposed use, and its impact.
- c) The Planning Board shall approve, approve with conditions, or deny the request for a waiver or modification.

Section 8.03 Reinstatement of development applications.

(a) Conditions.

- (i) Where the deadlines for particular actions are exceeded and the development application or approval is therefore rendered invalid, an application may be reinstated by the Planning Board under the following conditions:
- (ii) Within a period of one year after the expiration of the application, reinstatement may be granted to that point in the review which the application had reached prior to expiration.
- (iii) Where the expiration period is greater than one year but not more than two years, the application reinstatement may be granted to recommence at the previous highest level of review.
- (iv) Where the expiration period is greater than two years, the application process is required to restart.

(b) Criteria.

Application for reinstatement of a previously approved subdivision shall be made to the Planning Board in writing by the subdivider. The Planning Board, in approving or denying the request for a

reinstatement, shall make findings of fact which shall be made part of the record. Such findings shall be based on the following criteria:

- (i) The subdivision is consistent with the comprehensive plan;
- (ii) The subdivision regulations affecting the application are substantially the same as they were at the time of original approval;
- (iii) The zoning of the subdivision parcel affecting the application is substantially the same as it was at the time of original approval;
- (iv) Physical conditions on the subdivision parcel affecting the application are substantially the same as they were at the time of original approval; and
- (v) Any applicable state or federal regulations affecting the application are substantially the same as they were at the time of original approval.

Section 8.04 Decisions on waivers and modifications.

The Planning Board shall approve, approve with conditions, or deny a request for a waiver or modification by the following procedure:

- (a) The Planning Board's decision shall be made within 45 days of the date the request for the waiver or modification was first considered by the Planning Board, unless the applicant waives that deadline.
- (b) The Planning Board's decision shall be in writing, and shall contain findings of fact addressing the conditions contained in article 8, section 8.1.

Article IX. ENFORCEMENT AND PENALTIES

Section 9.01 Violations.

- (a) Any person who fails or refuses to adhere to all of the terms and conditions of any subdivision of land or development plan that has been approved by the Planning Board or the administrative officer shall be in violation of these regulations.
- (b) Any owner, or agent of the owner, who transfers, sells, or negotiates to sell any land by reference to or exhibition of, or by other use, a plat of the subdivision before the plat has been approved by the Planning Board and recorded in the land evidence records shall be in violation of these regulations.
- (c) Any person who, having submitted an application for subdivision or development approval, begins construction of the subdivision or development, or constructs any structure or improvement on the parcel, without having first received final approval from the Planning Board or the administrative officer, and without having first posted the required improvement guarantee, shall be in violation of these regulations.

Section 9.02 Penalties.

Any person adjudged in violation of these regulations shall be liable for penalties not to exceed \$500.00 per day, and each day of existence of a violation shall be deemed a separate offense.

Section 9.03 Injunctive relief.

- (a) The city shall have the authority to bring suit in the county superior court to restrain the violation of, or compel compliance with, the provisions of these regulations.
- (b) An action for injunctive relief brought by the city in the superior court may be consolidated with an action seeking penalties for violations of these regulations.

Article X. ADOPTION AND AMENDMENT OF REGULATIONS

Section 10.01 Adoption and amendment procedures.

The Planning Board shall adopt and amend these subdivision and land development regulations according to the procedures set forth in this article.

(a) Public hearing notice requirements.

- (i) No local regulations shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the Planning Board, at which opportunity shall be given to all persons interested to be heard upon the matter of the proposed regulations.*
- (ii) Notice of a public hearing on any proposed adoption or amendment shall be published in a newspaper of general circulation within the city at least once each week for three successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held.*
- (iii) The newspaper notice shall be published as a display advertisement, using a type size at least as large as the normal type size used by the newspaper articles, and shall:*
- (iv) Specify the place of said hearing and the date and time of its commencement;*
- (v) Indicate that adoption, amendment or repeal of local regulations is under consideration;*
- (vi) Contain a statement of the proposed amendments to the regulations that may be printed once in its entirety, or may summarize or describe the matter under consideration;*
- (vii) Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and*
- (viii) State that the proposals shown thereon may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing, provided that any such alteration or amendment must be presented for comment in the course of said hearing.*
- (ix) Notice of the public hearing shall be sent to the following:*
 - (x) The associate director of the division of planning of the state department of administration. Said notice, which may be a copy of the newspaper advertisement, shall be sent at least two weeks prior to the public hearing.*
 - (xi) The city or town planning board of any municipality where there is a public or quasipublic water source, or private water source that is used or is suitable for use as a public water source, located within 2,000 feet of the boundaries of the city. Said notice shall be sent first class mail.*
 - (xii) The governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or surface watershed that is used or is suitable for use as a public water source located within the city or within 2,000 feet of the city's boundaries, provided that the governing body of the state or municipal water department or agency, special water district, or private water company has filed with the city building official a map survey showing the areas of surface water resources and/or watersheds and parcels of land within 2,000 feet of the areas of surface water resources and/or watersheds, pursuant to G.L. § 45-24-53(E).*
 - (xiii) The Planning Board shall conduct a public hearing at the date, time and place specified in the newspaper advertisement and notices.*

Section 10.02 Publication and availability.**(a) 10.2.1. Printed copies of regulations.**

Printed copies of these regulations, any exhibits, and all amendments shall be available to the general public. A reasonable charge may be made for copies. Upon publication of local regulations and any amendments thereto, the administrative officer shall send a copy to the state department of administration, division of planning and to the state law library.

Section 10.03 Severability.

10.3.1. If any article, subsection, paragraph, sentence, clause or phrase in these regulations shall for any reason be held to be invalid or unconstitutional by a decree or decision of any court of competent jurisdiction, such decree or decision shall not affect or impair the validity of any other section or remaining portion of these regulations.

Article XI. ADMINISTRATION OF REGULATIONS AND AMENDMENTS

Section 11.01 Planning Board

(a) Composition of the Board

(i) Appointment and removal

The Board shall consist of nine members, appointed by the Mayor of the City, who shall be qualified electors of the Cirk, and who shall serve for a term of five years with such terms staggered according to the Section 8-13 of the Warwick City Charter, Any member of the Board may be removed from office by the Mayor for due cause, following a public hearing, pursuant to 45-22-3, as amended. Due cause shall include, but not be limited to, failure to attend three (3) consecutive meetings of the Board.

(ii) Organization

- a. In February of each year, the Board shall elect a Chairperson and Vice Chairperson for the purpose of signing plats and plans, pursuant to state law and Article 6.0 of these Regulations, the Vice Chairperson shall also be designated as the Secretary of the Board. The Chairperson and Vice Chairperson may not serve more than two terms consecutively. The Board may adopt any procedural rules, not inconsistent with these Regulations, deemed necessary to the discharge of its duties.
- b. The Board shall hold a regular meeting each month. The Board may hold special meetings at the direction of the Chair.

(iii) Cooperative Agreements and Technical Assistance

The Board may require the Administrative Officer, subject to the limit of funds appropriated to it, enter into cooperative agreements with any other city or town, state, regional, or federal agencies or private organizations to undertake studies deemed to be in the best interest of the City, including cooperative agreements with cities or towns in neighboring states where problems of common interest are deemed to exist. The Board may accept or engage technical or clerical assistance, including the hiring of one or more Planning Board Engineers or assistance from other public agencies or private organizations, subject to the limit of funds appropriated to it.

(iv) Meetings, votes, decisions, and records.

- a. All records of the Planning Board proceedings and decisions shall be written and kept permanently available for public review. Completed applications for proposed land development and subdivision projects under review by the Planning Board shall also be available for public review.
- b. Participation in a Planning Board meeting or other proceedings by any party shall not be a cause for civil action or liability except for acts not in good faith, intentional

misconduct, knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton or willful misconduct.

- c. All final written comments to the Planning Board from the administrative officer, municipal departments, state and federal agencies, and local boards or commissions shall be part of the permanent record of the development application.
- d. All votes of the Planning Board shall be made part of the permanent record and shall show the members present and their votes. A decision by the Planning Board to approve any land development or subdivision application shall require a vote for approval by a majority of the current Planning Board membership.

(b) Powers of the Board

(i) Dedication and Reservation of Open Space

Where land within a proposed subdivision or development project is deemed to be of unique natural character or is identified in the Warwick Comprehensive Community Plan, or where the proposed subdivision or development project is of sufficient size so as to warrant consideration of the provision of open space to serve residents of the subdivision or development project, the Board may require the dedication of a portion of the land area of the subdivision or development project, or other public improvements, for such purposes. The Board shall make such determination prior to granting preliminary approval. The intended use of the land so dedicated shall be so stamped on the final plat plan.

a) Requirements

Prior to the Board requiring the dedication of such land, the following requirements shall be met and set forth as findings by the Board in its approval.

i) Character

All required public improvements must reflect the character defined for that neighborhood or district by the Comprehensive Plan;

ii) Need

The need for all dedications of land to the public or for payments-in-lieu of such dedications must be clearly documented in the adopted plans of the City, such as the Comprehensive Plan, Zoning Ordinance or the Capital Budget;

iii) Documentation

No dedications of land to the public or payments-in-lieu of dedications may be required until the need for such are identified and documented by the Board, the land proposed for dedication is determined through specific findings to be appropriate for the proposed use

The land conveyed shall be so located and of such a nature as to be readily adaptable and usable for recreation purposes. For conventional subdivisions, the minimum amount of land to be dedicated shall be based upon the following formula:

$$\text{Amount of Dedicated Land (acres)} = \text{Maximum number of dwelling units within the subdivision}^1 \times \text{Persons per dwelling unit}^2 \times \text{Land Need}^3$$

1. The maximum number of dwelling units in all phases of the land development project or subdivision.
2. The average number of persons expected to be living in the dwelling units to be constructed.
3. Land need shall mean the adopted City standards for open space and outdoor recreation areas provided in the City of Warwick Comprehensive Plan.

The Board may, in its discretion, require that the applicant clear, grade and landscape the land to be dedicated in order to make it suitable for recreation purposes. If the Board requires such improvements then the amount of land may be reduced as to offset the cost of such improvements by the applicant. If a single applicant intends to subdivide an area consisting of more than one (1) contiguous subdivision or section, the land to be conveyed shall be computed and selected on the basis of the entire area to be subdivided and shall be delineated and approved by the Planning Board prior to preliminary approval of any component subdivision or section. In addition, the Board, in its discretion, may direct that final approval of such component subdivision or section be conditional upon conveyance of making the required improvement or furnishing the adequate access to the recreation land in question.

2) Ownership of Land

Land dedications required by this section may be made by transfer of fee simple ownership to any of the following:

- a. The City of Warwick
- b. The State of Rhode Island
- c. The United States Government
- d. A private Homeowner’s Association
- e. A private non-profit conservation or recreation group

The Planning Board will determine to which organization the land will be dedicated.

3) Fees-in-Lieu of Land Dedication.

If the Planning Board determines that a suitable park, playground or recreation area of an adequate size cannot be properly located in such subdivision plat, or is otherwise not practical, then the Board may require, as a condition to approval of any final submission, a payment of a monetary fee by the applicant to the City.

Where a fee is required by the Planning Board to be paid in lieu of land dedication, the amount of such fee shall be based on the fair market value of the amount of land, which would otherwise be required to be dedicated. The amount of such fee shall be determined by the following formula:

$$\text{Fee in lieu of dedication} = \text{Fair Market Value of Land}^1 \times \text{Maximum number of dwelling units}^2 \times \text{Persons per dwelling unit}^3 \times \text{Land Need}^4$$

1. Fair market value of land in the parcel being subdivided after subdivision approval has been granted, and which is suitable for use as open space, conservation, park and recreation facilities.
2. The maximum number of dwelling units to be constructed in the subdivision.
3. The average number of persons expected to be living in the dwelling units to be constructed.
4. Land need shall mean the adopted Town standards for open space and outdoor recreation area as provided in the Warwick Comprehensive Plan.

Such fee shall be deposited in an interest-bearing fund titled, "Recreation Capital Account". The Parks & Recreation Department, upon majority vote of the City Council, may expend up to 20 percent of the principal for capital acquisition of recreational facilities within the Recreation District (as defined by the Comprehensive Plan) in which the proposed development is located.

If the applicant questions the amount of said fee in lieu of land, he/she may request a hearing by the Board of Appeal. At this hearing, the Board of Appeal will take evidence and testimony, as it deems appropriate. Said hearing may be part of the final approval hearing if the Planning Board so stipulates.

4) Fair Market Value

Fair market value of the land, assuming subdivision approval has been granted, shall be determined prior to the time of filing of the final plan in accordance with one of the following:

1. As determined by the Warwick Tax Assessor from recorded sales within the last 24 months;
2. If the applicant objects to such amount of evaluation as determined in "a" above, he/she may, at his/her own expense, obtain an appraisal of the property by a qualified real estate appraiser, which appraisal may be accepted by the Planning Board if found to be reasonable; or
3. The Planning Board and applicant may agree as to the fair market value.

5) Land Value

The actual need for open space land and conservation land is expressed in acres per 1,000 of population based on the Comprehensive Plan. The 2022 City-wide need is 10.0 acres per 1,000 residents.

6) Persons per Dwelling Unit

The applicant may provide an estimate of the projected number of persons per dwelling unit in the proposed land development project or subdivision and shall state the basis for such estimate. The Planning Board shall review and approve of such estimate. Otherwise, the figure of 2.61 persons per household from the 2000 Census shall be used.

7) Time of Conveyance of Land or Payment of Fee in Lieu of Conveyance of Land

Unless otherwise directed by the Board, the deed for land to be conveyed (and/or the fee to be paid in lieu thereof) in accordance with the foregoing provisions of this article shall be delivered to the City prior to final approval of the applicable subdivision or section thereof.

The Planning Board fully realizes the financial hardship that may be placed on a developer of tracts of over 10 lots, and will allow prorated payments of 25 percent of the amount at the final approval and the remaining fee in two equal installments on the next two anniversary dates of the final approve with an interest payment of 8% (eight percent) annually. Said payments shall be secured by a promissory note and recorded as a mortgage on said lots.

Section 11.02 Administrative officer.

(a) Administration.

Local administration of these Regulations shall be under the direction of the Administrative Officer, who shall oversee and coordinate the review, approval, recording and enforcement provisions of these Regulations. Whenever reference is made to the Administrative Officer, it shall include any member of the staff of the Department of City Plan who has been delegated to carry out such duties by the Administrative Officer.

(b) Appointment.

The appointment of the director of planning and development shall be the responsibility of the mayor of the City of Warwick.

(c) Duties and responsibilities.

The duties and responsibilities of the administrative officer shall include but not be limited to:

- i. Oversee and coordinate the review, approval, recording, and enforcement of the provisions of these regulations;

- ii. Coordinate the reviews of proposed land development projects and subdivisions as is necessary to be consistent with applicable federal, state and local laws and as directed by the Planning Board.
- iii. Coordinate enforcement efforts of local regulations with the zoning enforcement officer, the building inspector, planning department staff, the city engineer, the department of public works, and other local officials responsible for the enforcement or carrying out of discrete elements of the regulations.

(d) **Qualifications.**

The qualifications of the administrative officer shall be determined by the mayor as provided in the official job description for the director of planning and development.

Section 11.03 Appeals of Planning Board Decisions.

The zoning board of review is the board of appeals to hear appeals of decisions of the Planning Board or the administrative officer on matters of review and approval of land development and subdivision projects.

Section 11.04 Fee schedules.

(a) **Procedure.**

This document, subject to revision from time to time in a manner spelled out herein, constitutes the Planning Board's rules governing the imposition of fees and its current fee schedules.

(b) **Purpose.**

These regulations and fee schedules have been adopted to produce a more equitable schedule of fees which more accurately reflects the costs of technical, design and legal review of applications to the Planning Board; to establish a review procedure in the selection of consultants; to encourage better design of residential development; and to promote more informed decision-making by the Planning Board.

(c) **Fee Structures and Regulations.**

- (i) *General.* The Planning Board shall impose reasonable fees for the review of applications which come before it. The Planning Board may impose administrative fees and project review fees as may be applicable to the types of applications set forth below.
- (ii) *Method of payment.* The payment of administrative fees and project review fees shall be by check only or by such other method as approved by the administrative officer.

(d) **Administrative fees.**

- (i) *Applicability.* An administrative fee shall be assessed to offset the expense of review by the Planning Board and city departments with regard to all applications set forth in Article 05. of these subdivision and development regulations.

(ii) *Submittal.* Administrative fees shall be submitted at the time of the submittal of the application. Any application filed without this fee shall be deemed incomplete and no review work by the city shall commence until the fee has been paid in full.

Schedule of administrative fees. The following schedule applies to the types of applications to the planning Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the zoning ordinance, the subdivision and land development regulations, and any checklists which may have been compiled from time to time for the benefit of applicants.

Table 1 – Schedule of Fees

Pre-application Meeting with Staff*	\$ 50.
Pre-application Meeting with Planning Board*	\$ 100.
Administrative Subdivision:	\$ 50.
Minor Subdivision without street:	\$ 50. per buildable lot
Minor Subdivision with a street, Major Subdivision, Land Development Project (LDP), or Development Plan Review (DPR):	Residential: \$ 100 per buildable lot, and Non-Residential: \$2. per 100 sq. ft. GFA (\$100. minimum)
Extension of time: Administrative Subdivision, Minor Subdivision or Minor Land Development Project:	\$ 100.
Extension of time: Major Subdivision, Major Land Development Project or Development Plan Review:	\$ 300.
Reinstatement of expired application: Administrative Subdivision, Minor Subdivision or Minor Land Development Project:	\$ 200.
Reinstatement of expired application: Major Subdivision, Major Land Development Project or Development Plan	\$ 600.

*Pre-application conferences credited against fee for next stage if development proceeds.

(e) Engineering Inspection Fees

The applicant will also be required to reimburse the City for the cost of review and inspection by the City Engineer. Such cost shall be estimated by the City Engineer assigned to the subdivision or development project at each stage of review, and shall be paid in advance by the applicant in order for that stage of application to be certified complete. Such estimate shall not be exceeded without the consent of the Board, which shall first notify the applicant and extend an opportunity to object the total fee shall be paid by the applicant before proceeding to the next stage of approval.

(f) Fees for revised applications.

- (i) Where an administrative fee has been calculated by the number of lots or units proposed, and the application is revised after payment of said fee, the following rules shall apply:
 - a. If the number of proposed lots or units increases after the initial submittal, the applicant shall pay a fee equivalent to the difference between the fee originally paid and the fee that would have been paid had the original submission included these additional lots or units. No review of these additional lots or units shall take place until this additional fee is paid to the city, and failure to make this payment after requesting additional lots shall be grounds for denial of the application.
 - b. If the number of proposed lots or units decreases, a refund of that portion of the application fee predicated on those lots or units shall be granted only if, in the judgment of the Planning Board, no cost associated with the review of those lots or units has been yet incurred.
- (ii) *Fee waivers.* The Planning Board may, upon approval of the city council, waive or reduce any administrative fee, if, in the opinion of the Board, unusual circumstances exist regarding the subject property or the applicant.
- (iii) *Refund.* Once the review process has been commenced, the Planning Board shall not refund administrative fees, including the case of withdrawal of the application by the applicant, except as provided above.

(g) Project review fees

- (i) *Applicability.* In addition to an administrative fee, for all subdivisions and land development projects, the Planning Board shall impose a project review fee on those applications which require, in the judgment of the Planning Board, review by outside consultants due to the size, scale or complexity of a proposed project, the project's potential impacts, or because the city lacks the necessary expertise to perform the review work related to the permit or approval. The fee shall ultimately equal the actual cost to the city for such consultant. In hiring outside consultants, the city may engage engineers, planners, lawyers, landscape architects, architects, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, ordinances, and regulations. Such assistance may include, but shall not be limited to, analyzing an application, design review of applications to determine consistency with the comprehensive plan; determining

consistency with the purposes and design standards for conservation developments; assessing the economic, archaeological, traffic or environmental impact of a development proposal, review of unique site features including trees; or for monitoring a project or site for compliance with the Board's decisions or regulations. Project review fees are separate from, and in addition to, fees imposed by the city for inspecting a project during construction or implementation as provided in Article 11, Section 11.03.

- (ii) *Submittal*. Initial project review fees shall be submitted at the time of the submittal of the master plan application (for major subdivisions or land development projects) and at the time of the submittal of the preliminary application (for minor subdivisions or land development projects). These fees shall be held in custody by the finance director (escrow account). Any application filed without this fee shall be deemed incomplete and no review work shall commence until the fee has been paid in full.
- (iii) *Schedule of initial project review fees*. The following schedule applies to the types of applications to the Planning Board set forth below. This schedule supersedes all previous schedules as they may have appeared in the subdivision and land development regulations, and any checklists which may have been compiled from time to time for the benefit of applicants. Where more than one type of application has been submitted for Planning Board action, only the largest of the applicable initial project review fees shall be collected to be held in the escrow account, and not the sum of those fees.
 - a. \$500.00 for each lot or dwelling unit for the first five lots or dwelling units, (whichever is greater) including existing dwellings, if present;
 - b. Plus \$250.00 for each lot or dwelling unit thereafter.
- (iv) *Replenishment*. When the balance in an applicant's escrow account falls below 25 percent of the initial project review fee, as imposed above, the Planning Board may consider whether to require a supplemental project review fee to cover the cost of the remaining project review.
- (v) *Inspection phase*. As a condition of final plan approval, the Planning Board shall require inspection fees in accordance with Article 11, Section 11.03 for the purpose of ensuring the availability of funds during the inspection phase of the review process.
- (vi) *Handling of project review fees*. The project review fee is to be held in an escrow account as established by the finance director. No interest shall accrue on any funds held in this escrow account.
 - 1) Outside consultants retained by the city to assist in the review of an application shall be paid from this account.
 - 2) Project review fees may be used by the city for the purposes stated in Article 11, Section 11.03(e) at any time during the review process.
 - 3) Project review fees shall be turned over to the finance director by the administrative officer to be held in an escrow account.
 - 4) The finance director shall prepare a report for the administrative officer on activity in the escrow account upon request.

- 5) An accounting of an applicant's funds held in the escrow account may be requested by the applicant at any time. The finance director shall respond to the request in a timely fashion.
 - 6) An applicant may request the administrative officer to provide an estimate of bills pending from consultants for work completed, or in progress, but not yet invoiced.
 - 7) Excess fees in the escrow account shall be returned to the applicant or the applicant's successor in interest. For the purpose of this section, any person or entity claiming to be an applicant's successor in interest shall provide the Board with documentation establishing such succession in interest. Excess fees shall be returned at the conclusion of the review process which is defined as either:
 - a) With the disapproval of a subdivision or land development plan; or
 - b) With the release of the performance bond or other financial guarantees at the end of construction of an approved final plan; or
 - c) With the final inspection after approval on all other types of applications under the zoning ordinance or subdivision and land development regulations.
- (vii) *Disqualification.* The choice of a consultant hired by the city for the review of an application may be appealed as provided in Article 12.0.
- 1) Three circumstances may disqualify the selected consultant. These conditions constitute the only grounds for an appeal.
 - a) Conflict of interest: A consultant shall not have a financial interest in the project under review, or be in a position to financially benefit in some way from the outcome of the pending review process.
 - b) Lack of appropriate qualifications: A consultant shall possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree in, or related to, the field at issue or three or more years of practice in the field at issue or a related field.
 - c) Business relationship: The consultant has conducted business with an applicant within the past 18 months. The required time limits for action upon an application by the Planning Board shall be extended by duration of the appeal. Reinstatement/extensions. Applications for extension of approvals or deadlines established by these regulations shall pay a reinstatement/ extension fee equal to the administrative filing fee for the review stage of approval that expired. See Article 8, Section 8.03.

Section 11.05 Precedence of approvals between the Planning Board and other local permitting authorities.

- a) With the exception of Unified Development Plan Review, where an applicant requires both a variance from the local zoning ordinance and Planning Board approval, the applicant shall first obtain an advisory recommendation from the Planning Board, as well as conditional Planning Board approval for the first approval stage for the proposed project, which may be

simultaneous, then obtain conditional zoning board of review relief, and then return to the Planning Board for subsequent required approval(s).

- b) With the exception of Unified Development Plan Review, where an applicant requires both a special use permit under the local zoning ordinance and Planning Board approval, the applicant shall first obtain an advisory recommendation from the Planning Board, as well as conditional Planning Board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional special use permit from the zoning board of review, and then return to the Planning Board for subsequent required approval(s).
- c) Where an applicant requires both Planning Board approval and city council approval for a zoning ordinance or zoning map change, the applicant shall first obtain an advisory recommendation on the zoning change from the Planning Board, as well as conditional Planning Board approval for the first approval stage for the proposed project, which may be simultaneous, then obtain a conditional zoning change from the city council, and then return to the Planning Board for subsequent required approval(s).

Article XII. APPEALS

Section 12.01 Procedure for appeals to the board of appeals.

Any party aggrieved by a decision of the Planning Board or the administrative officer shall have the right to appeal that decision, to the extent provided in G.L. § 45-23-66, to the board of appeals.

Appeals from a decision granting or denying approval of a final plan shall be limited to elements of such approval or disapproval not contained in the decision reached by the Planning Board at the preliminary review stage, providing that a public hearing was held at that stage pursuant to G.L. § 45-23-42. Appeals shall be governed by the following procedure:

- a) The appeal must be taken within 20 days of the day the decision is recorded and posted in the office of city clerk.
- b) The appeal shall be in writing and shall state clearly and unambiguously the factual and legal issue(s) or decision that is being appealed, the reason for the appeal, and the relief sought.
- c) The appeal shall either be sent by certified mail, with a return receipt requested, or shall be hand delivered to the clerk of the board of appeals.
- d) Upon receipt of an appeal, the board of appeals shall require the Planning Board or administrative officer to transmit forthwith to the board of appeals all papers, documents and plans, or a certified copy thereof, constituting the record of the action which is being appealed.
- e) An appeal shall stay all proceedings in furtherance of the action being appealed.

Section 12.02 Public hearings on appeals to the board of appeals.

Appeals of the decision of the administrative officer and the Planning Board shall be given a public hearing set forth as follows:

- a) The board of appeals shall hold a public hearing on each appeal within 45 days of receipt of the appeal by the clerk of the board of appeals.
- b) The public hearing shall be conducted at a meeting called and advertised especially for that purpose, and shall be conducted separately from any zoning board of review meeting that may be advertised for that same date and place. The public hearing may be held on the same date and at the same place as a meeting of the zoning board of review.
- c) Notice of the public hearing shall be published in a newspaper of general circulation within the city at least 14 days prior to the date of the public hearing. Notice shall be sent by first class mail to the parties to the appeal and to those persons required to be notified by article 5.0 of these regulations. The cost of any notice required for the public hearing shall be borne by the appellant.
- d) At the public hearing, any party may appear in person, or may be represented by an agent or attorney.

- e) The board of appeals shall maintain a complete record of all its proceedings, including minutes of meetings and records of votes taken, which shall be separate from the minutes and records of the zoning board of review.
- f) The board of appeals shall render a decision within ten days of the close of the public hearing. The decision shall be in writing and shall include reasons for the decision.

Section 12.03 Board of appeals standards of review.

The board of appeals shall render a decision on the appeal in the following manner:

- a) The board of appeals shall not substitute its own judgment for that of the Planning Board or the administrative officer, but shall consider the issue upon the findings and record of the Planning Board or administrative officer. The board of appeals shall not reverse a decision of the Planning Board or administrative officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record.
- b) The concurring vote of three of the five members of the board of appeals sitting at a hearing shall be necessary to reverse any decision of the Planning Board or administrative officer.
- c) In the instance where the board of appeals overturns a decision of the Planning Board or administrative officer, the proposed project application shall be remanded to the Planning Board or administrative officer, at the stage of processing from which the appeal was taken, for further proceedings before the Planning Board or administrative officer and/or for the final disposition, which shall be consistent with the board of appeal's decision.

Section 12.04 Appeals to the superior court.

(a) 12.4.1. Appeals of decisions of the board of appeals.

- a) An aggrieved party may appeal a decision of the board of appeals to the county superior court by filing a complaint setting forth the reasons of appeal within 20 days after the decision has been recorded and posted in the city clerk's office.
- b) When the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the members of the Planning Board shall be made parties to the proceedings.
- c) The appeal to the superior court shall not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make such other appropriate orders as it deems necessary for an equitable disposition of the appeal.
- d) Within 30 days after being served with a copy of the complaint, the board of appeals shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies thereof, together with such other facts as may be pertinent, with the clerk of the court.
- e) The court shall review the appeal pursuant to G.L. § 45-23-71.

(b) 12.4.2. Appeals of enactment or amendment of regulations.

- a) Any legal resident or landowner or any association of residents or landowners of the city may appeal an enactment or amendment of these regulations by the Planning Board.

- b) Said appeal shall be made by filing a complaint in the county superior court within 30 days after such enactment or amendment has become effective.
- c) The appeal shall not stay the enforcement of the local regulations, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make such other orders as it deems necessary for an equitable disposition of the appeal.
- d) The complaint shall set forth with specificity the area or areas in which the enactment or amendment is not consistent with the following:
 - 1. G.L. § 45-22.2-1 et seq., known as the Comprehensive Planning and Land Use Regulation Act;
 - 2. G.L. § 45-24-27 et seq., known as the Zoning Enabling Act of 1991;
 - 3. The city comprehensive plan; or
 - 4. The city zoning ordinance.
- e) The court shall review the complaint without a jury. The court shall consider whether the enactment or amendment of the local regulation is consistent with the referenced article or sections of 12.4.2.d.1 through 4 and if the court finds that the enactment or amendment is not consistent, the court shall invalidate the enactment or the amendment, or those parts of such enactment or amendment which are not consistent. The court shall not revise the local regulations to be consistent, but may suggest appropriate language as part of the court decision.
- f) The court may in its discretion, upon motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, as set forth herein, including the municipality.

Article XIII. APPLICATION CHECKLISTS

- a) Checklist for Administrative, Minor, and Major Subdivisions and Land Developments
Checklist for Development Plan Review

ARTICLE XIV. SUBDIVISION AND DEVELOPMENT DESIGN STANDARDS

Section 14.01 General Provisions

The subdivider, at his/her own expense, shall construct or install improvements designed by a registered engineer in accordance with the specifications of this Appendix. References to "All Subdivisions" shall include both residential and non-residential subdivisions, References to "Subdivision" with no prefix shall mean residential subdivisions only, Non-residential subdivisions include commercial and industrial developments, These required improvements are minimum design standards and accordingly, where conditions relating to the site warrant additional requirements, the Planning Board may, after citing such conditions and establishing reasons for exceeding such standards, require that the design and construction shall exceed these standards.

(a) Other Agency Approval

Development requiring approval by the Rhode Island Department of Environmental Management, the Rhode Island Coastal Resources Management Council, or the U.S. Army Corps of Engineers will not be given final approval for subdivision by the Planning Board in the absence of approval from those agencies. A letter of conditional approval will be given pending approval from the above agencies.

(b) Layout Intent

The general layout of the subdivision or development shall be designed to complement the natural form, features and vegetation of the land. The general pattern and design of the circulation system in the subdivision shall be designed so that it will provide safe vehicular and pedestrian travel.

(c) Compatibility

New developments must be considered in relation to their compatibility to existing conditions in any given area. Although Warwick is largely built out, undeveloped areas with somewhat rural characteristics are often near existing developments, As these undeveloped areas are subdivided, they should be compatible with existing areas in order to preserve property values in the existing developments and to insure that social organization of neighborhoods are advanced.,

(d) Transitions

The intent of a "transition" is to separate and/or blend together different types of development features An example of a transitional treatment of between an existing, more densely settled subdivision, and a proposed subdivision with more open space and fewer buildings might be to design the roadway, sidewalk and landscape elements in a style or manner similar to the existing subdivision where the old and new meet and then gradually break away to the more open characteristics that the

new area envisions.. The necessity and extent of the transition shall be determined based on the individual situation relating to existing topography, foliage, intensity of development, and the proposed corollaries of those same items,. In certain cases transitions of some type should be introduced, or in lieu of transitions, a transitional treatment of a subdivision development may be desired, To treat new development totally differently than that which already exists will have a different visual impression This treatment could possibly create social discord of the different types of neighborhoods in close proximity and possibly diminish property values that have been developed through the years. in areas where existing development is contiguous with proposed development, transitions may be prescribed.

Section 14.02 Subdivision Design - All Subdivisions

(a) Streets

The general pattern of streets in a subdivision shall consider the existing street system and shall be arranged to conform with Comprehensive Plan.

- i. *Access* - There shall be at least two (2) points of access in a standard subdivision. A cluster subdivision may propose one access point, provided that it meets public safety requirements.
- ii. *Topography* - Streets shall be designed to conform to the topography of the land and substantial alterations to the natural drainage pattern shall be avoided.
- iii. *Name* - Any extension of an existing street shall have the same name *as* the existing street. The names of proposed streets shall be substantially different from existing street names in the City of Warwick, to avoid confusion to emergency services.
- iv. *Extension of Street* - Proposed streets which are extensions of any existing street shall generally maintain the same width of such existing street. Alternative street widths may be proposed, if the subdivider can clearly demonstrate that variations in street widths provide logical breaks by virtue of existing physical characteristics of the land such as topographical and other site conditions.
- v. *Extension of Street Within Subdivision* - Where a subdivision proposal entails several new streets off of an existing street, the new street widths shall conform to the requirements in this Appendix.
- vi. *Large Lot Re-Subdivision* - Where the tract is subdivided into lots of an acre or more, the Board may require such an arrangement of lots and streets as will permit a later re-subdivision in conformity with the street requirements specified herein, and in order that the later subdivisions may conform to the ultimate location of streets and extension of adjacent streets.

- vii. *Apportioning Street, Sidewalk and Grass Strips* - The apportioning of the street between roadway, sidewalk, and grass strips shall be in accordance with standards as indicated herein. The road width itself shall be wide enough for the purpose intended, with no more than moderate modification of existing topography, destruction of existing trees, and interruption of drainage ways. Sidewalks shall be placed on both sides of a roadway, and may meander both horizontally and vertically from the paved roadway profile in order to create interest, preserve existing topography, save existing mature trees, shrubbery, and other natural features most appreciated by people using the sidewalks. In every case, the sidewalk shall be no closer to the right-of-way line than one foot_ The width of sidewalks shall be no less than four (4) feet.

- viii. *Right-of-Way and Travel Way Widths* - The minimum width for any right-of-way in a standard residential subdivision shall be in accordance with the definitions contained herein and the schedule below:

	ROW Width	Travel Way Width	ADT
Arterial	80 feet	40 feet	>3,000 ADT
Collector	60 feet	30 feet	1,000 - 3,000 ADT
Subcollector	50 feet	30 feet	250 - 1,000 ADT
Access	40 feet	26 feet	0 - 250 ADT

An arterial is high-volume street used primarily for fast and heavy traffic and generally have no residences. A collector carries traffic from minor streets to the major system of arterial streets, including the principal entrance streets of a residential development. A subcollector provides passage to access streets and conveys traffic to collectors. An access road is for local service streets and streets used primarily for access to abutting properties. Access roads shall be laid out so that their use by through traffic will be discouraged. ADT is "Average Daily Traffic."

Where the Board deems it undesirable that the width be as specified, it may modify said requirements. In no case shall the width of a street be less than 40 feet.

Commercial and industrial subdivisions shall not contain ROW widths and Travel Way widths less than those indicated for arterial and collector.

Right-of-Way Width Measurement - Rights-of-way widths shall be measured from lot line to lot line.

Maximum Grade - The maximum grade of major streets shall be 5 percent except where necessary to adjust to topographical conditions. The minimum grade of streets shall be .7 percent.

- ix. *Dead-End Streets and Cul-de-Sacs* - Dead-end streets without a turn-around and not designed for eventual continuance will not be approved. Streets which are designed to have one end permanently closed (cul-de-sacs), shall be clearly indicated with a "Dead-End" sign (or equivalent International symbol) at their entrance and shall include, at the closed end, a turn-around roadway having a minimum outside radius of fifty (50) feet.. Cul-de-sacs with interior islands are permitted and shall have a paved travel way width of twenty (20) feet and an interior circular island.. Cul-de-sacs containing interior islands shall require provisions for maintenance to be provided by a neighborhood association and contained in the association by-laws,

The maximum length of a cul-de-sac is to be determined by traffic volume and the number of house lots. A residential cul-de-sac should handle no more than 250 trips per day.. One single family home generates approximately 10 trips per day; therefore the maximum number of house lots on a cul-de-sac shall not exceed 25., The maximum length of any cul-de-sac under any conditions shall not exceed 1,600 feet, Maximum cul-de-sac lengths shall be in accordance with the schedule below:

Zoning District	Number of House Lots	Average Daily Traffic	Minimum Frontage	Makimum Length
A-7	25 lots	250	70 feet	840 linear feet
A-10	25 lots	250	100 feet	1,200 linear feet
A-15	25 lots	250	125 feet	1,500 linear feet
A-40	25 lots	250	150 feet	1,600 linear feet

Commercial and industrial subdivisions shall not exceed 1,600 feet,

Intersections - Streets shall be laid out so as to intersect as nearly as possible at right angles. Where a deflection angle of more than ten degrees in a street line occurs at any point, a curve of reasonably long radius is to be introduced.

x. Street Intersection Radius - Property lines at street intersections shall be rounded with radii of twenty-five (25) feet, or of a greater radius where the Board may deem it necessary.

xi. Subdivisions Bordering Railroads and Highways - Where a subdivision in a residential district borders on or contains a railroad right-of-way or limited access highway right-of-way, the Planning Board may require a street to be laid out approximately parallel to and on each side of the fight-of-way adjoining or within the subdivision, the width of and distance of the street from the right-of-way of such street to be determined by the Planning Board. Where a subdivision in a commercial or industrial district borders on or contains a railroad right-of-way, the Planning Board shall require a street to be laid out approximately parallel to and on each side of such right-of-way adjoining or within the subdivision at a distance from the right-of-way suitable for the appropriate use of the intervening land. In each case distances from the right-of-way shall be determined with due regard for the requirements of approach grades and future grade separations.

- xii. *Private Streets and Reserve Strips* - There shall be no private streets. Each lot shall abut upon a public street. There shall be no reserve strips controlling access to streets, except where the control of such strips is definitely placed with the city under conditions approved by the Board.
- xiii. *Cross Streets* - Cross streets shall have no centerline offsets unless deemed necessary by the Board in the case of a connection with an existing street. The minimum distance between two street intersections shall be 125 feet.

Access to Arterials - Where a subdivision abuts an existing or proposed arterial street the Planning Board shall require access roads (roads which are parallel and adjacent to arterial streets and which provide access to abutting properties and protection from through traffic) or reverse frontage with screen planting contained in a nonaccess reservation along the rear property line or other such treatment as may be necessary for adequate protection of residential properties and to afford separation of through and local traffic.

xiv. *Utilities Underground* - New telephone, electrical, cable television and other utility lines shall be installed underground and shall conform to the appropriate utility company's policy for such underground installation. The Board may grant a waiver to this requirement only where particular site or topographical conditions warrant overhead utility lines.

xv. *Poles and Fixtures* - All light poles and fixtures, street signs and poles shall be provided and installed by the subdivider, subject to the approval of the Department of Public Works.

(b) Sidewalks

Sidewalks shall be required along both sides of all subdivision streets. Sidewalk design and materials may be varied by the subdivider, with Planning Board approval, provided that the primary intent of a sidewalk, pedestrian access and enjoyment, has been achieved along with durable construction standards and shall be handicapped accessible.

- i. *Parallel Sidewalks* - Sidewalks shall run parallel with the street, except where existing trees and other plant material worthy of preservation or rock outcroppings exist and right-of-way is available, in which case the sidewalk may be designed to wind around these features.
- ii. *Sidewalk Widths* - The minimum width of concrete sidewalks in residential subdivisions shall be as follows:

<u>Arterial</u> -	8 feet
<u>Collector</u> -	6 feet
<u>Subcollector</u>	4 feet
<u>Access</u> -	4 feet

These widths may be varied with the approval of the Planning Board.

Commercial and industrial subdivisions shall not contain sidewalk widths less than those indicated for arterial and collector.

- iii. *Landscaped Strip* - A landscaped strip with grass and trees shall be required between the sidewalk and the street, except at intersections of the sidewalk and street. The minimum width of this strip shall be not less than four (4) feet. Access to underground utilities shall be provided within the sidewalk area and shall not interfere with the landscaped strip. If, owing to the topography or other site characteristics, the edge of a sidewalk is proposed to be two feet or less from the curb, the grass strip or tree belt may be of brick or cobblestones. All such landscaped strips shall be maintained by the adjacent property owner or by a homeowners association, if one exists. For commercial and industrial subdivisions, landscaped strips shall be maintained by the property owner or the office or industrial park developer or association.
- iv. *Reduction of Sidewalks* - The subdivider may propose installation of sidewalks, only in residential subdivisions, on one side of a street only if all of the following conditions are met:
 1. Access streets and subcollectors are designed to take maximum advantage of topography and to save existing trees which contribute to neighborhood character.
 2. The single sidewalk must serve the neighborhood in a logical, safe, efficient manner.
 3. The sidewalk width be increased to 6 feet; the sidewalk need not parallel the roadway paving, but shall generally follow the roadway with a variable separation
- v. *Interior Walkways* - A walk provided through the middle of a subdivision is permitted and encouraged. This walk would be of a more casual nature than those next to the street, and may be more irregular, may have a different surface which is accessible in compliance with the Americans with Disabilities Act (ADA), and may provide places for sitting or children's games. Such inner-block walks may be important in establishing access to open space. All such walks shall be maintained by a homeowners association. Bus stops or places to sit are encouraged to be provided along the walk.
- vi. *Sidewalk Safety* - Proposals for sidewalks shall take into account sharp corners and other locations where the natural tendency of the pedestrian is to go off the walk by providing a durable but coarser material such as cobblestones or exposed aggregate concrete between the sidewalk and an arc with a radius of a proximately four (4) feet connecting both sections of walk,
- vii. *Handicap Access* - Handicap access and wheelchair ramps shall be installed at intersections.
- viii. *Curbing* - Wherever sidewalks are required, appropriate curbing shall also be required and shall meet design and construction standards in

(c) Landscaping, Trees and Appurtenances

Street trees are required in all subdivisions, unless waived by the Planning Board based on its finding that existing trees will not be removed or that sufficient natural growth exists within the front yards of lots in the subdivision.

- a. *Grid Subdivisions* - Street trees shall be planted along both sides of all streets and be located within the Landscaped Strip (See D,2.2.c), Trees shall be planted at distances of not more than fifty (50) feet apart along each side of the street At street corners, trees shall not be planted within twenty-five (25) feet of the intersecting right-of-way lines,
- b. *Curvilinear Subdivisions* - Street trees may be grouped, spaced, alternately placed, or otherwise distributed to form regular or irregular patterns on the landscape which are compatible with the style of the subdivision, The total quantity of trees shall equal or exceed that which would result from the required spacing.
- c. *Materials* - Trees shall be grown under local climatic conditions and be of symmetrical growth, free of insect pests and disease, suitable for street use and durable under the maintenance contemplated. The average trunk diameter measured at a height of twelve (12) inches above the finished grade shall be a minimum of three (3) inches. The lowest branch shall be at least 80" above finished grade to meet ADA standards. Trees proposed for planting shall be approved by the Planning Board, All planting shall be done under the supervision of a licensed arborist. Loam shall be clean, of good quality and of such fertility and composition that it will support plant growth.

(d) Alleys and Easements

- i. *Residential Areas* - Alleys shall not be permitted in residential areas..
- ii. *Commercial and Industrial Areas* - Alleys may be provided in commercial and industrial districts in order to provide service access, such as off-street loading and unloading consistent with and adequate for the proposed use.
- iii. *Width* - The width of an alley shall not be less than 24 feet
- iv. *Dead-Ends* - Dead-end alleys are prohibited,
- v. *Fire Department Review* - Design of alley ways shall be reviewed by the Warwick Fire Department.
- vi. *Easements* - The Board may require easements, not exceeding ten feet each side of rear lot lines and on side lot lines, for poles, wires, conduits, storm and sanitary sewers, subdrainage facilities, gas, water and heat mains or other utility lines or access to historical cemeteries, or other municipal needs *as* determined by the Board. Easement for drainage purposes of the same or greater width may be required along the lines of or across lots where necessary for reasons of topography for the extension of the existing or planned utilities.

Utilities - If, in the opinion of the Board, the most suitable and reasonable locations for sewers, storm drains, sub-drainage facilities, water and gas pipes, electric pole

lines and conduits, or other utilities likely to be required do not lie wholly within the plat, the Board may reasonably require provision to be made for the location of such utilities outside the plat. Such requirements must be effectuated by the dedication of public easements as part of the plat or by the filing of supplementary instruments which will adequately protect the public interest in the proper location of said utilities.

(e) Blocks

- i. *Length* - Intersecting streets shall be so laid out that blocks between street lines shall be not more than 1,600 feet in length.
- ii. *Crosswalks* - Pedestrian crosswalks, shall be required where deemed essential to provide circulation, or access to schools, playgrounds, shopping centers, transportation, and other community facilities,,
- iii. *Commercial and Industrial Blocks* - Industrial and commercial blocks shall be platted in such a way as to be suited for the intended occupancy. The Board shall require that industrial blocks be large enough to accommodate potential industries, and that commercial and industrial areas make adequate provision for future parking and delivery service.

(f) Lots

- i. *Conformance with Zoning* - The minimum width for residential lots and the minimum lot area shall be in conformity with the Zoning Ordinance,, So far as practicable, in all lots the wide lines shall be at right angles to straight street lines or radial to curved street lines. An arrangement placing adjacent lots at right angles to one another shall be avoided wherever possible. Corner lots shall maintain a minimum 80% of the required lot width on the alternate street in conformity with the Zoning Ordinance. Narrow, deep lots shall be avoided wherever possible.. Building set-back and envelope shall be plainly designated on the plat.
- ii. *Commercial and Industrial Subdivisions* - Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.
- iii. *Use* - Use of lots must be designated.

(g) Drainage

For all proposed developments, the subdivider shall submit a *Stormwater Management Plan* stamped by a registered engineer which details proposed drainage design and Best Management Practices (BMP's) which will be used in the development to achieve the same or a greater level of purifying and retentive qualities as existed on the site prior to development

Where possible, drainage designs shall incorporate natural features in a manner that will not impair their beneficial functioning. Considerations shall be given to the preservation of existing vegetation and topographic features. Stormwater management plans shall incorporate drainage designs which aesthetically and functionally approximate natural drainage systems such as grassed swales. Wherever such designs cannot be achieved, reasons shall be furnished in writing to the Planning Board.

Design, implementation and maintenance of stormwater facilities detailed in the above mentioned stormwater management plan shall conform to standards, recommendations and requirements contained in the most recent editions of the Rhode Island Design and Installation Standards Manual, the Rhode Island Soil Erosion and Sediment Control Handbmk, and the Rhode Island Department of Transportation (RIDOT) Standards for Approved Drainage Structures.

- i. *Surface and Sub-Surface Waters - Stormwater Management Plans* shall include but not be limited to site plans detailing stormwater facilities and BMP's as well as a written narrative describing the manner in which proposed measures will be designed to achieve:
 - a. No net increase in rate of runoff off the site under varying rainfall conditions and storm frequency,
 - b. Control peak discharges from varied storm events,
 - c. An eighty (80) percent removal rate on a annual basis for Total Suspended Solids (TSS),
 - d. On site retention of the first one inch of runoff from impervious surfaces,
 - e. Protection or improvement of water quality both surface and groundwater,
 - f. Removal of oil and sediment from parking areas prior to entering receiving waters,
 - g. Ease of maintenance for stormwater structures and/or BMP's,
 - h. A detailed maintenance plan for each structure and BMP prescribed,
 - i. Minimum erosion during and after construction,
 - j. The least amount of site disturbance necessary for the proposed development, and
 - k. Minimize impact to the natural functions, characteristics and values of freshwater and coastal wetlands.

In addition to addressing the aforementioned, all *Stormwater Management Plans* shall conform to the design criteria and performance standards contained within the most recent edition of the Manual.

These are considered minimum requirements. If site conditions warrant, the Planning Board, at its discretion, may require additional information and standards.

- ii. *Stormwater Structures* - All water detention and/or retention structures and BMP's shall be located on a separate lot not intended for development. The Planning Board, upon recommendation of the Director of Public Works and the Planning Director, may waive this requirement for certain non-structural EMP's, The grade of all detention/retention facilities shall be consistent with that of the city of Warwick Soil Erosion and Sediment falttoickdinarcc.

If a fence surrounding a drainage structure is deemed necessary by the Planning Board, the subdivider shall provide two or more alternative fence designs which must be decorative, functional and compatible with the style of the proposed development and/or surrounding neighborhood. In no case shall a fence exceed five (5) feet in height or be solid in appearance. The Planning Board will select the preferred design. If a chain link fence is proposed, the subdivider shall provide a landscape plan which includes suitable deciduous and/or evergreen screening so as to completely surround the height and breadth of the chain link fence,

To ensure attainment of goals of the approved stormwater management plan, all stormwater infrastructure and BMP's constructed on the site shall retain a one year performance and maintenance guarantee, pursuant to Section 6.5, so as to insure proper functioning and design for both water quality and quantity performance standards.

- iii. *Ground Water* - If the original ground water elevation, as determined in percolation tests or the spring ground water elevation as estimated by the Director of Public Works, whichever is higher, is higher than seven feet below finished grade of the street, sub-drainage facilities adequate to lower the ground water elevation to seven feet below finished grade or restrictions on the plat providing for location of the lowest floor elevation of a building at least three feet above the ground water elevation or restrictions on the plat providing for construction designed to help prevent ground water from entering the building shall be required.
- iv. *Sub-drainage* - No original contours of the subdivision shall be altered so as to reduce the suitability of the soil for proper sub-drainage. Additional percolation tests may be required in areas where the contours have been altered.
- v. *ISDS* - Insofar as feasible, each lot shall be designed to permit the location of an individual sewage disposal system (ISDS) between the building site and the street_

Section 14.03 Cluster Subdivision Design Standards

Cluster subdivisions are permitted only in residential subdivisions and are intended to maximize open space, while providing a well-designed layout for housing units. The design elements are intended to follow natural features, such as existing vegetation, rock outcroppings, natural contours of the land and topography.. Earth moving, other than that which is minimally needed for home sites, roads and infrastructure, is prohibited. The objectives are to permanently preserve

as much land as possible in its natural state and to preserve farmland, slopes, riverbanks, frontage on water bodies and other significant natural features on the site for the common enjoyment of present and future residents,

(a) Streets

- i. *Circulation Pattern* - The pattern of circulation should be obvious to the motorist, with access roads clearly subordinate to collector and subcollector streets. Pavement width, street alignment, design and location of intersections, frequency and degree of horizontal and vertical curves, width of abutting lots, frontage and setback of homes or other means should heighten the distinction between access and collector roads.
- ii. *Roadway Design* - Access roads should be designed to inhibit speeding of motor vehicles; to discourage through traffic by use of cul-de-sacs, curves, frequency and design of intersections. Collector streets should not channel traffic into access roads.
- iii. *Water Runoff* - All street systems and parking areas shall be placed to avoid channeling excessive runoff of water unchecked onto lower streets, lots, or directly into bodies of water.
- iv. *Right-of-Way Widths* - Street widths must reflect the function of the road, Due consideration must be given to special street width construction and paving requirements resulting from the use of a cluster layout_ The following schedule of ROW and Travel Way widths is required:

	ROW Width	Travel Way Width	ADT
Arterial	Not permitted	N/A	N/A
Collector	50 feet	30 feet	1,000 - 3,000 ADT
Subcollector	50 feet	28 feet	250 - 1,000 ADT
Access	40 feet	26 feet	0 - 250 ADT

(b) Sidewalks

- i. *One Sidewalk* - A sidewalk is required on one side of the street.
- ii. *Variable Pattern* - The sidewalk need not parallel the roadway paving, but shall generally follow the roadway with a variable separation.
- iii. *Widths* - Sidewalk width shall be 6 feet.

(c) Landscaping and Trees

- i. *Design* - Trees and landscaping shall be designed by a licensed landscape architect and be arranged in a manner compatible with existing foliage of all types. The Board may grant waivers of landscape requirements of new trees and shrubbery if the subdivider has made a concerted effort to conserve existing topography, trees, and shrubs.

- ii. *Compatibility* - New trees and shrubs, in all cases, shall be compatible by species and variety with plants growing within the area of the subdivision. This is not meant to exclude introduction of new varieties for evergreen cover, screening, seasonal color, or other traditional landscape uses, but is meant rather to ensure that the neighborhood is compatible with its natural surroundings.
- iii. *Groupings and Spacing* - Street trees may be grouped, spaced, alternately placed, or otherwise distributed to form regular or irregular patterns on the landscape which are compatible with the style of the development. It shall be the goal of the landscaping and trees requirement of this section to replace trees and shrubs which have been destroyed through construction, and to ensure that the subdivision will regain value *as* a harmonious landscape in as quickly a time as practicable.
- iv. *Trees Noted on Surveys* - The topographic surveys shall note all trees within proposed rights of way six (6) inches or larger in diameter measured at twelve (12) inches above the ground in all areas of the subdivision. The subdivider shall replace on a two-for-one ratio all trees, that are eight (8) inches or more in diameter, that must be removed within rights-of-way. Such replacement trees shall be at least three (3) inches in diameter and may be located anywhere within the development
- v. *Trees Protected* No person shall remove a public or protected tree or a tree of cultural, historic, botanical or site specific significance (such significance to be determined by the Planning Board) within a cluster subdivision without first proposing such removal in the subdivision plan, together with written reasons therefore, and receiving approval from the Planning Board as part of a Final Plan.
- vi. *Waivers* - The Planning Board may grant waivers for tree quantity replacement at its discretion so long as the proposed development is considerate of the character of the landscape surrounding the proposed development.
- vii. *Materials* - Trees shall be grown under local climatic conditions and be of symmetrical growth, free of insect pests and disease, suitable for street use and durable under the maintenance contemplated. The average trunk diameter measured at a height of twelve (12) inches above the finished grade shall be a minimum of three (3) inches.. The lowest branch shall be at least 80" above finished grade to meet ADA standards. Trees proposed for planting shall be approved by the Planning Board. All planting shall be done under the supervision of a licensed arborist. Loam shall be clean, of good quality and of such fertility and composition that it will support plant growth.

(d) Sewage Disposal

Where sewers are not present, on-site systems should be located to facilitate future connection with a public sewer system, unless health, drainage, and topographic considerations make an alternative location desirable.. Where planned expansion of the sewer system happens to be in or near the subdivision, necessary easements shall be provided to facilitate future connections.

(e) Telephone and Electrical Utility Lines

All new telephone and electrical utility lines shall be installed underground and shall be in conformance with the appropriate utility company's policy and requirements in all cluster developments,

(f) Poles and Fixtures

All light poles and fixtures, street signs and poles shall be approved by the Director of Public Works and furnished and installed by the subdivider at his/her cost.

(g) Surrounding Areas

The site plan shall ensure maximum compatibility with surrounding land uses and structures. The open space should normally create a greenbelt around the development to provide maximum buffering from more intense uses or traffic, to ease the transition to residential areas of lower density. Where the site adjoins single family detached housing areas, the building heights, spacing and setback from the lot line shall be compatible with those of the detached housing areas.

(h) Building Groupings and Siting

Buildings shall be clustered to create comfortable and convenient groupings for the residents of the development while providing efficient groupings for the delivery of city services. Lots which are abutted by two parallel or approximately parallel streets (through lots) or lots which have at least part of their rear lot lines in common (back-to-back lots) are generally not permitted unless the subdivider submits a request for waiver, in writing, and the Board makes a finding of fact that such through lots or back-to-back lots are necessary for the safety and convenience of the subdivision.

(i) Common Open Space

The required common open space areas shall be distributed throughout the development as part of a unified open space system and/or should connect with existing open spaces, if any, to unify the entire development visually and functionally, in order to buffer the development from surrounding non-residential land uses, and to provide recreational space.

a. *Design Objectives* -

- a. To permanently preserve as much land as possible in its natural state and in large parcels that would not be possible in standard subdivision.
- b. To preserve farmland, slopes, riverbanks, frontage on water bodies and other significant natural features on the site for the common enjoyment of all present and future residents.

b. *Design Criteria* -

- a. Open space may be in one or more parcels, the size, location, shape and character of which must be suitable for the designated use of the cluster development.
- b. No more than fifty (50) percent of the required open space under common ownership and use shall be used for active recreational purposes.
- c. No more than twenty (20) percent of the required open space shall be devoted to paved areas for driveways and parking, structures used for active outdoor recreation and paved pedestrian paths throughout the development,
- c. *Open Space Development* - Common open space must be suitably preserved and improved for its intended use. The buildings, structures, and improvements which are permitted in the common open space must be appropriate to the uses which are authorized for the common open space, and must conserve and enhance the amenities to the common open space having regard to its topography and unimproved condition. Site improvements shall be designed and located to avoid disturbance of conservation areas such as wetlands.

The development schedule which is part of the development plan must coordinate the improvement of the common open space, the contribution of buildings, structures, and improvements in the common open space, and the construction of residential dwellings in the cluster development.

If the final development plan provides for buildings, structures, and improvements in the common open space, the developer shall be responsible for providing only those improvements shown on the Final Plat and the Detailed Landscaping Plan.

If the value of site improvements are in excess of \$25,000, the subdivider must provide bond or other adequate assurance that the buildings, structures, improvements shall be completed. In a multi-phased development the aforementioned bonding procedure shall only apply to that phase being developed.

- d. *Required Easements* - The owner of the plat shall deed to the City of Warwick easements across the open space, not exceeding twenty (20) feet in width for the purpose of installing and maintaining sanitary and storm sewer and water lines.

Provisions shall be made that the City of Warwick shall be granted, at the time of final plat approval, an easement over such land sufficient to ensure its perpetual maintenance as conservation, recreation, or park land for the enjoyment of present

and future residents. Such easement shall be made to run with the land. All easements are subject to the review and approval of the City Solicitor.

Maintenance - The owner(s) of the plat must record covenants acceptable to the City Solicitor which must be made to run with the land and be referred to in all subsequent deeds, requiring the owner or owners of the common open space area to maintain such common open space areas and homeowner association facilities.

The owner(s) of the common open space shall jointly and or severally be responsible for maintaining the common areas in accordance with Ch. 10 Housing Standards, Code of Ordinances, City of Warwick.

In the event that owner(s) fail to maintain properly the common open space areas, the Building Official may serve written notice upon owner(s) of the common open space setting forth the manner in which the organization has failed to maintain the open space in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within a specified period. The Building Official may modify the terms of the original notice as to the deficiencies and may give an extension of time within which they shall be cured, If the deficiencies set forth in the original notice or in the modification thereof are not cured within said specified period or any extension thereof, the Building Official may make entry on the common open space and correct the deficiencies listed. The cost of any maintenance or corrective work performed by the City shall be billed to the organization or assessed against the property owners within the subdivision or development who have a right to the enjoyment of the open space, and shall become a tax lien on said properties at the time of entry upon said open space by the Building Official. The Building Official shall file a notice of lien as provided by law and notify the Planning Board of his/her actions.

- e. *Homeowners Association* - The common open space in a single family cluster development shall be owned in common by the lot owners in the tract through membership in an incorporated homeowners' association.
 - a. *Establishment* - The establishment and initial control of the homeowners' association is the responsibility of the developer of the single family cluster development. The developer shall prepare and file, by law, Articles of Incorporation and by-laws pursuant to the purpose, structure, operator, and powers of the association.

- b. *Control Transfer* - Until such time as owners other than the developer own twenty-five percent (25%) or more of the homes in the development, the developer shall be entitled to appoint the entire Board of Directors of the homeowners' association. After owners other than the developer own twenty-five percent (25%) or more of said residences, the developer shall be entitled to appoint two-thirds (2/3) of the members of the Board of Directors and this right shall continue in effect until three (3) years after the developer has closed sales on fifty percent (50%) of the residences, or three (3) months after the developer has closed sales on ninety percent (90%) of such residences, whichever occurs first. At such time the developer shall be entitled to appoint one-third (1/3) of the members of the board. Subsequent to the time that the developer ceases to own any residences in the development, the Board of Directors shall be entirely elected by the residents of the single family cluster development.
- c. *Modification* - Any incorporated homeowners association shall not be dissolved nor shall it dispose of any common open space property or improvements under its ownership or control. However, any incorporated homeowners association may be modified into another form or entity, provided that such new entity shall comply with these Regulations and shall first get approval from the Planning Board,. If any homeowners association were to dissolve by default or failure to renew articles of incorporation, the individual property owners, their heirs and assigns, shall be liable for all the requirements and responsibilities described in these Regulations.
- d. *Other Provisions*.
1. The homeowners' association must be established prior to the sale of any homes in the single family cluster development.
 2. Membership in the association must be mandatory for each homeowner and any successive homeowners.
 3. The association shall obtain and maintain liability insurance to protect the association and sufficient to restore any common open space elements to its original state prior to any natural or man-made disaster. All officers of the homeowners' association must be bonded.
 4. The homeowners' association is responsible for the maintenance of the common open space land and those improvements located within the common open space. Maintenance shall be performed in accordance with **Section D.3.9.e** of these Regulations.
 5. The homeowners' association has the power to make, collect and adjust assessments. The assessment funds shall be used for but are

not limited to performing maintenance, repair to common open space and provide operating funds for the association.

- e. Homeowners' Assessment Responsibilities - Homeowners must pay their prorata share of the maintenance and operating costs through the payment of the assessment levied by the homeowners' association regardless of how title is acquired including a purchase at a judicial sale. In a voluntary conveyance, the grantee shall be jointly or severally liable with the grantor for all unpaid assessments against the grantor for his/her share of the common expenses up to the time of conveyance, with out any prejudice to any right in the grantee may have to recover from the grantor the amounts paid by the grantee.

The liability for assessments may not be avoided by waiver of the use or enjoyment of any common elements or by abandonment of the residence for which the assessments are made.

The homeowners' association shall have a lien on each residential parcel for any unpaid assessments with interest, and if the by-laws all for reasonable attorney's fees incurred by the association incident to the collection of the assessment or enforcement of the lien.

The homeowners' association has the right to suspend the enjoyment of any homeowner for any period during which the assessments are unpaid by him/her, and to charge any reasonable admission or other fee.

- f. *Homeowners` Association By-Laws Provisions* - The administration of the homeowners' association and the operation of the common open space and improvements shall be governed in accordance with By-Laws, which shall be set forth as an exhibit at the time of the preliminary hearing. The By-Laws shall provide for and include the following:
- 1) The administrative form of the homeowners' association shall be described, indicating the numbers and titles of the officers and the board of directors and specifying the powers, duties and manner of selection and removal, terms along with compensation, if any, of officers and board members.
 - 2) Number of association meetings to be held per year including provisions for special meetings and board meetings.
 - 3) Methods assuring that all meetings will be open to association members,
 - 4) Record keeping methods assuring that all association meetings and fiscal dealings are accounted for and available to the association members.
 - 5) Voting rights and procedures regarding the homeowners' association.

- 6) Manner in which assessments shall be made, collected and adjusted, enumerating the uses of the assessment funds.
- 7) Method by which the By-Laws may be amended.
- 8) Method by which the association may be terminated, to be consistent with **Section D.3.913** of these regulations.

Section 14.04 Construction Requirements - Streets, Minor and Major Subdivisions

All surveys and construction for roadways, sidewalks, curbing, drainage systems, culverts, bridges and other systems shall conform to the Rhode Island *Standard Specifications for Road and Bridge Construction*, latest edition, hereafter referred to as the *Standard Specifications*.

Section 14.05 Other Requirements - All Subdivisions

- a. *Monuments* - Monuments shall be installed at all street intersections, at all points of change of direction or curvature of the streets, at the corners of all lots, and at other points where, in the opinion of the Planning Board, permanent monuments are necessary. Such monuments shall conform to the following specifications: Granite monuments thirty inches (30") in length, dressed to four (4) inches square at the top with a three-eighths (3/8) inch drill hole in the center, and not less than four (4) inches square at the bottom, and shall be set to finish grade.. If it is impractical to set the monument to the above depth due to a natural obstruction, then a short monument may be used if, and only if, it is permanently anchored to the natural obstruction,. No permanent monuments shall be installed until all construction which would destroy or disturb the monuments is completed.
- b. *Easements* - The Planning Board may require the dedication to the City of easements required for the present or future installation and maintenance of utilities, drainage structures, public access ways, open space or for other necessary public purposes
- c. *Recommended Trees* - The following varieties of trees are recommended for front yard planting:

Large Trees

Almira Maple	(<i>Acer platanoides</i> Almira)
Armstrong Red Maple'	(<i>Acer rubrum</i> Armstrong)
Bowhall Red Maple	(<i>Acer rubrum</i> Bowhall)
Buisman Elm	(<i>Ulmus carpinifolia</i> Buisman)
Cleveland Maple	(<i>Acer platanoides</i> Cleveland)
European Beech	(<i>Fagus sylvatica</i>)
Globe-Head Maple	(<i>Acer platanoides globosum</i>)
Irish Maple	(<i>Acer platanoides</i> Irish)
Japanese Keaki or Zelkova	(<i>Zelkova serrata</i>)
Little Leaf Linden	(<i>Tilia cordata</i>)
London Plane	(<i>Plantanus acerifolia</i>)
Ruby Red Horse Chestnut	(<i>Aesculus briotti</i>)
Schwedler Maple	(<i>Acer platanoides</i> schwedleri) (<i>Acer rubrum</i>
Tilford Maple	Tilford)
Upright Beech	(<i>Fagus sylvatica</i> Dawyck)
Upright Maple	(<i>Acer platanoides ascendens</i>)

Small Trees

American Hop Hornbeam	(<i>Ostrya virginiana</i>)
Chinese Cork Tree	(<i>Pelleodendron arnursense</i>)
Chinese Dogwood	(<i>Cornus Kousa</i>)
Double White English Hawthorn	(<i>Crataegus phaenopyrum</i>)
Eley Crab	(<i>Malus</i>)
European Mountain Ash	(<i>Sorbus aucuparia</i>)
Flowering Ash	(<i>Fraxinus ornus</i>)
Flowering Globe Locust	(<i>Robinia pseudo</i>)
Flowering Peaches	(<i>Prunus persica</i>)
Fruitless Mulberry	(<i>Monts alba Kingan</i>)
Globe Locust	(<i>Robinia pseudo-acacia</i>)
Golden Rain	(<i>umbraculifer</i>)
Idaho Locust	(<i>Koelreuteria paniculata</i>)
"Kwanzan" Japanese Flowering Cherry	(<i>Robinia hispida</i>)
	(<i>Prunus serrulata Kwanzan</i>)
Lava le Hawthorn	(<i>Crataegus lavalleyi</i>)
Paul's Scarlet Hawthorn	(<i>Crataegus oxyacantha Pauli</i>)
Red Silver Flowering Crabapple	(<i>Malus</i>)
Redbud	(<i>Cercis canadensis</i>)
Washington Hawthorn	(<i>Crataegus phaenopyrum</i>)
Wheatly Elm	(<i>Ulmus carpiniifolia sarniensis</i>)
White Beam Mountain Ash	(<i>Sorbus aria lutescerns</i>)

Specimen Trees

Columnar White	(<i>Betula alba fatigiata</i>)
Birch Clump Birch	(<i>Betula alba clump</i>)
European Birch	(<i>Betula alba</i>)
Saw Tooth Oak	(<i>Quercus</i>)

Shingle Oak	(Quercus imbricaria)
Sourwood	(Oxydendr um arboreum)
Thornless Honey Locust	(Gleditsia)
Upright American Linden	(Tilia americana pyramidalis)

- d. *Location for Planting* - Trees shall be planted in required front yard areas and have a maximum spacing of 50 feet as measured on the property line. Trees shall not be planted over any cesspool, septic tank, or associated drainage area.. Trees shall be located, if possible, so that when full grown the branches will not interfere, with utility lines. Distances between trees and the street property line may vary.
- e. *Size of Tree at Planting* - Trees when planted shall have a minimum height of approximately eight (8) feet and a minimum diameter of three (3) inches at a height of approximately one foot above the root ball.

Planting Instructions - Trees shall be planted in accordance with standards of the American Association of Nurserymen.

Section 14.06 Waivers and/or Modification of Standards.

Where strict adherence to design standards is not feasible due to special land conditions or other characteristics of the subdivision or site, and not through any self-imposed hardship by the owner or subdivider; the Planning Board may, pursuant to Section 6.8 of these Regulations, grant waivers and/or modifications to any requirement in this Appendix provided that such waiver or modification is not contrary to the general intent and spirit of these Regulations and provided further that such waivers or modifications shall not include any action which is not in conformity with the Zoning Ordinance, or other applicable local ordinance or' State statute.

Section 14.07 Inspection of Improvements

All improvements to be installed by the subdivider shall be inspected by the Department of Public Works, Engineering Division. The Administrative Officer shall assist the City Engineer with scheduling of inspections and notifications.

- a. *Notification* - No phase or step in the construction of required improvements to the land shall commence until the Administrative Officer and City Engineer have been notified in writing at least twenty-four (24) hours prior thereto,
- b. *Inspection* - Each phase or step in the construction of required improvements to the land shall be inspected and approved on the job by the City Engineer. No further phase or step shall commence until such inspection and approval has been completed. The City Engineer upon proper notification of commencement of a phase or stage of construction shall not impede such construction by delaying inspection and approval without just cause provided, however', that the City Engineer shall have the authority to require such changes

as may be necessary to cause compliance with the required Specifications and standards.

- c. *Cost of Inspection* - In accordance with Section 7.4.2 of these Regulations the cost of all inspections shall be paid by the subdivider.. The Planning Board will invoice the subdivider following each inspection,. Rates shall be set by the Planning Board
- d. *Inspection Records* - The Administrative Officer shall maintain a record of all subdivision inspections and shall submit a report of each inspection to the Planning Board with a copy to the record file of the subdivision. This report shall be signed by the Administrative Officer and City Engineer.

